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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Zaire, prepared by the Special Rapporteur, Mr. Roberto Garretón, in accordance with Commission resolution 1994/87

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I. INTRODUCTION

A. Mandate of the Special Rapporteur

1. On 9 March 1994, the Commission on Human Rights adopted without a vote resolution 1994/87 entitled "Situation of human rights in Zaire", subsequently adopted by the Economic and Social Council in its decision 1994/270 of 25 July 1994. The Commission, concerned "about the persistent seriousness of the situation of human rights in Zaire", referred in particular to the "use of force during peaceful gatherings, arbitrary arrests and detentions, summary executions, torture and inhuman treatment in detention centres", and also to "serious shortcomings in the administration of justice ..., violations of freedom of opinion and expression and forced population displacements". The Commission had earlier been informed by the Secretary-General (E/CN.4/1994/49) of displacements of more than 750,000 persons belonging to ethnic minorities. The Commission also expressed its concern about the "serious obstacles which still stand in the way of the process of democratic transition".

2. The Commission invited its Chairman to appoint, after consultations with the Bureau, a special rapporteur mandated to establish direct contacts with the authorities and the people of Zaire. In accordance with paragraph 9 of the resolution, the Chairman of the Commission appointed the Special Rapporteur, who submits this report.

3. The Commission considered the situation of human rights in Zaire from 1985 to 1989 and from 1991 to 1992 under the confidential procedure established by Economic and Social Council resolution 1503 (XLVIII). In November 1992, Mr. Michel Moussalli was appointed the Secretary-General's Special Representative to consider the human rights situation in Zaire, in accordance with the Commission's confidential decision of 18 February 1992. He submitted a report to the Commission under that procedure. One year later, it was the Secretary-General who was requested to submit a report (E/CN.4/1994/49) to the Commission, under resolution 1993/61. The Commission also received reports on alleged violations of human rights in Zaire from the Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1994/7, paras. 653-662; E/CN.4/1993/46, paras. 654-656; E/CN.4/1992/30, paras. 598-604; E/CN.4/1992/30/Add.1), the Special Rapporteur on torture (E/CN.4/1994/31, paras. 657-664; E/CN.4/1992/17, paras. 266-269), the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1994/26, paras. 509-513) and the Working Group on Arbitrary Detention.

B. Activities of the Special Rapporteur

4. In a note verbale dated 13 September 1994, the Secretariat transmitted, through the Permanent Mission of the Republic of Zaire to the United Nations Office at Geneva, to the Minister for Foreign Affairs a letter from the Special Rapporteur, dated 29 August 1994, enclosing the text of Commission resolution 1994/87 and asking to visit the country. The same letter was also transmitted on 27 September 1994 to the Zairian Government authorities through the Office of the United Nations Development Programme (UNDP) in Kinshasa.

5. The Special Rapporteur held two rounds of consultations in Geneva, from 19 to 23 September and from 1 to 5 November 1994. He spoke with officials of the United Nations High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC), with representatives of the non-governmental organizations Plate-forme Zaire-Suisse, the World Organization against Torture, Amnesty International, International Service for Human Rights, International Federation of Human Rights and Médecins du Monde, as well as with journalists and academics and individuals wishing to contribute their own personal testimony. During a private visit to Washington, the Special Rapporteur had contacts with the International Human Rights Law Group and with the President of the Lubumbashi Bar Association, Mr. Jean Mbuyu.

6. On 26 October 1994, the Special Rapporteur received an invitation from the Ministry of Foreign Affairs of the Republic of Zaire to visit the country, which he did from 6 to 20 November 1994. During his visit, the Special Rapporteur was accompanied by two staff members of the United Nations Centre for Human Rights, in Geneva.

7. During his stay in Kinshasa, the Special Rapporteur spoke with Monsignor Laurent Monsengwo, President of the Supreme Council of the Republic - Parliament of Transition (HCR-PT); the President of the Supreme Court, Mr. Mikwin Leliel Balanda; the Prime Minister, Mr. Kengo Wa Ndondo; the Principal Secretary of the President of the Republic, Professor Vunduawe Te Pemako; the Deputy Prime Minister and Minister of the Interior, Mr. G. Malumba Mbangula; the Deputy Minister of the Interior, Mr. Bayombo Mbokol; the Minister for Defence, Mr. Mavua Mudima; the Deputy Prime Minister and Minister for Justice, Mr. Kamanda Wa Kamanda; the Deputy Minister for Primary and Secondary Education, Mr. Irumu Ikumu; the Deputy Minister for Foreign Affairs, Mr. Mukulumanya W.N.; the Minister for Social Affairs and Health, Mrs. Soki Fwani Eyenga; and the Minister for Communications, Mr. Masegabio Nzanzu; and with other senior officials responsible for the security forces. He also held talks with the leader of the opposition, Mr. Etienne Tshisekedi.

8. He also interviewed diplomats from the Embassies of Belgium, France, Spain, Switzerland and the United States and held a joint meeting with the representatives of the European Union countries.

9. The Special Rapporteur also met the representatives of many non-governmental organizations, including La voix des sans voix, Ligue des droits de l'homme, Comité pour la démocratie et les droits de l'homme, Societé internationale des droits de l'homme-Zaïre, Toges noires, Association zaïroise de defense des droits de l'homme (AZADHO), Service chrétien des droits de la femme, Ligue zaïroise des electeurs, Amnesty International-section Zaïre and Ligue pour la protection des droits de l'enfant. He also held talks with the representatives of the intergovernmental organizations UNICEF (United Nations Children's Fund), WFP (World Food Programme), UNHCR (United Nations High Commissioner for Refugees), ILO (International Labour Organization) and WHO (World Health Organization).

10. He also met representatives of the Zairian media, including reporters for the newspapers Solongo, Umoja, Le Soft, L'Evènement, Le Phare, Kin Matin, and Images, together with activists from a number of trade unions (Syndicat national des agents fonctionnaires de l'Etat, Syndicat des enseignants du Zaïre, Confédération nationale des mandataires des agents et fonctionnaires de l'Etat). He also met representatives of the Catholic Church, the Church of Christ in Zaire, the Kimbanguiste Church and Islam, and held talks with members of various political parties, including the Union pour la démocratie et le progrès social (UDPS) and the Mouvement populaire de la révolution (MPR). He paid visits to the University of Kinshasa, where he met the Rector and students, staff and parents' representatives, and to Makala and Ndolo prisons.

11. During his stay in the town of Goma, the Special Rapporteur met the local representative of the Government Procurator's Office, Mr. Jean Pierre Massala, and the Governor of the North Kivu region, Mr. Christophe Moto Mopenda, and visited the Katale and Mugunga Rwandese refugee camps. He also met human rights defence attorneys and representatives of the Société civile Nord Kuvi, OXFAM, Médecins sans Frontières - Netherlands and the International Committee of the Red Cross (ICRC), among others. He also visited the central prison of Goma and the detention facilities of the Civil Guard and the Gendarmerie.

12. In the town of Mbuji-Mayi, he held talks with representatives of Médecins sans Frontières, Médecins du Monde, Caritas, World Vision International and other organizations such as the Ligue des droits de l'homme, the Commission on Justice and Peace, the Red Cross, the Association de la presse africaine for L'enfance, the Conseil regional des organisations non gouvernementales and the Federation des ONG laïques à vocation écuménique. He also visited the Central Prison, the detention facilities of the Special Research and Surveillance Brigade (BSRS) and the displaced persons camp at Cibombo-Bashala. He also held talks with the Governor of Eastern Kasai region.

13. In Brussels, he met with representatives of the Government and of non-governmental organizations active in the human rights field in Zaire.

14. The Special Rapporteur feels compelled to point out that many individuals asked that their names should not appear in the report, for fear of reprisals.

15. The Special Rapporteur wishes to express his appreciation for the cooperation extended to him at all times by the Government of Zaire. He was received by the most senior government officials and was permitted to travel freely throughout the country and to interview anyone he wished. It should be noted, however, that no reply has so far been received to his requests for information on cases of alleged violations of human rights. He wrote four letters to the Government, dated 8, 14, 18 and 25 November 1994, and stressed the need for a reply. No answer had been received from the Government of Zaire at the time of publication of this report.

16. On 30 November 1994, the Special Rapporteur received a letter of protest from the Government of Zaire signed by the Deputy Prime Minister and Minister for Justice and referring to statements made by the Special Rapporteur at a press conference in Kinshasa on 19 November 1994. In this connection, the Special Rapporteur wishes to point out that it is usual for Special

Rapporteurs to hold press conferences at the end of their missions in the field. At the press conference in question, he spoke about his terms of reference, the purpose of his visit and his activities, to the cooperation that he had received at all times from the Government and to the dates on which his report would be submitted and considered by the Commission on Human Rights in Geneva. He also referred to his wish for early clarification of the case of the journalist Adolphe Kavula, to what he had observed in the prisons which he had visited and to his hope for the early establishment of a democratic regime which fully respected human rights.

17. The Special Rapporteur also wishes to express his appreciation for the cooperation and information received from intergovernmental and non-governmental organizations, in particular the UNDP office in Kinshasa, the UNHCR in Goma and the UNICEF office in Mbuji-Mayi.

C. International human rights instruments

18. Zaire is at present party to the following instruments: International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; Optional Protocol to the International Covenant on Civil and Political Rights; International Convention on the Elimination on All Forms of Racial Discrimination; International Convention on the Suppression and Punishment of the Crime of Apartheid; Convention on the Prevention and Punishment of the Crime of Genocide; Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Political Rights of Women; Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; Convention relating to the Status of Refugees; Protocol relating to the Status of Refugees.

19. In this context, it should be noted that reports from the Government of Zaire are awaited by the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women and the Committee on the Rights of the Child. Of particular concern is the delay in the submission of Zaire's reports to the Committee on the Elimination of Racial Discrimination, which are now more than 14 years overdue.

20. The Special Rapporteur pointed out to the Deputy Minister for Foreign Affairs that, despite Zaire's announcement in 1981 that it would ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it had not yet done so. He also mentioned to him the delays in the submission of reports to various committees. The Deputy Minister said that his Government was concerned at the situation, which would be rectified within the next few months.

21. The Government of Zaire has also failed to submit information requested by some of the special rapporteurs. For example, the previous Special Rapporteur on summary or arbitrary executions, Mr. Amos Wako reporting on his mission to Zaire in 1992 (E/CN.4/1992/30/Add.1), noted that Zaire was one of only six countries which had never replied about any of the cases submitted, despite the fact that allegations regarding cases of violations of the right

to life had been forwarded to it in 1985, 1986, 1988, 1991 and 1992. The present Rapporteur, Mr. Bacre Waly Ndiaye, has received information on only one of the cases brought to the Government's attention in 1993. Nor has there been any response to the two urgent appeals made and the cases submitted in 1994 by the Working Group on Arbitrary Detention.

22. Nevertheless, the Government of Zaire, disturbed by the international repercussions of the events at Lubumbashi (E/CN.4/1992/30/Add.1, chap. IV.A) invited Mr. Wako to visit the country during the trial of the persons charged. Later, it also cooperated with the Representative of the Secretary-General appointed in 1992 under the procedure established by resolution 1503 (XLVIII).

II. GENERAL BACKGROUND INFORMATION

23. The Republic of Zaire has a population of approximately 40 million. It is 2,345,409 km^2 in area and is bordered by the Central African Republic, Sudan, Uganda, Rwanda, Burundi, the United Republic of Tanzania, Zambia, Angola and Congo. Its borders correspond by and large to those fixed at the 1885 Berlin Conference, which assigned the territory of the Congo to the Belgian Crown. Some 40 per cent of the population are concentrated in urban centres. More than 4 million persons live in the capital, Kinshasa. Other major cities are Lubumbashi and Kisangani.

24. The official language is French, but Swahili, Lingala, Kikongo and Tshiluba are recognized as national languages. There are more than 200 other languages.

25. There are approximately 450 tribes belonging to six major ethnic groups: Bantus (who include the Luba, Kongo, Mongo, Lunda, Tchokwe, Tetala, Lulua, Bangala and Ngombe) make up 80 per cent of the population; the remainder are Sudanese (consisting of the Ngbandi, Ngabaka, Mbanja, Moru-Mangbetu and Zande), Nilotes (who include the Alur, Lugbara and Logo), Pygmies, Bambutis and Hamites.

26. Some 46 per cent of the population are Roman Catholic, although animism exerts a strong cultural influence. Other recognized religions are Protestantism (28 per cent), Kimbaguiste (16 per cent), Islam (1.3 per cent), Judaism, Greek Orthodox and, recently, the Jehovahs Witnesses, the Black African Church and the Seventh Day Adventists.

27. The country is at present divided into 11 administrative regions: Bas-Zaire, Bandundu, Equateur, Haut-Zaire, Shaba, Kasai Oriental, Kasai Occidental, Northern Kivu, Southern Kivu, Maniema and Kinshasa.

III. STRUCTURE OF THE STATE

A. Installation of the authoritarian regime

28. After gaining independence from Belgium in 1960, the Congo experienced a period of unrest and attempted secessions. In 1963, President Kasavubu appointed Mobutu Sese Seko Commander-in-Chief of the Armed Forces.

29. On 24 November 1965, Mobutu staged a coup, assumed all powers and proclaimed the Second Republic. In December, he announced that he would restore the country to civilian rule in five years. In 1966, he set up the Mouvement populaire de la révolution which was to remain the sole party for 25 years, and since 1967 the State party. In 1967, he proclaimed a new Constitution which remained in force, with a number of amendments, until the National Sovereign Conference in 1992.

30. At the end of the first Shaba war in 1977, Mobutu, in response to external pressures, announced his first "democratic reforms" which were brought to an abrupt end by the outbreak of the second Shaba war the following year.

B. The process of democratic transition

31. On 24 April 1990, Mobutu announced his intention to set up a Third Republic which was to lead to a liberalization of the system and initiate transition.

32. On 8 April 1991, the President yielded to popular and political pressure and agreed to convene a National Conference. Shortly after, in July of the same year, the main opposition parties amalgamated as the Union sacrée de l'opposition, which later became the Union sacrée de l'opposition radical (USOR) and then the Union sacrée de l'opposition radicale et allié (USORAL). The main parties making up the Union were the Union de fédéralistes et des républicains indépendants (UFERI), the Christian Social and Democratic Party and Federalist Christian Democracy. Later, many other small parties joined USOR, in addition to the Union pour la démocratie et le progrés social (UDPS) led by Etienne Tshisekedi, and the Union des démocrates indépendants (UDI).

33. Mobutu's Prime Minister, Isaac Kalonji Mutambayi, opened the National Conference in August 1991. It was attended by 2,800 delegates, including four members of each political party and representatives of public institutions and sectors of society.

34. The Conference was intended to prepare for an authentic transition to democracy by becoming a legislative authority, drafting a new constitution, drawing up legislation governing elections, the political parties, the mass media and nationality. It was also to be responsible for allocating powers during the transition and determining the status of the armed forces. In cultural terms, the Conference was to restore the spiritual and moral values of the Zairian people.

35. The Conference generated great expectations of a genuine transition to democracy. However, the problems began immediately. On 16 September 1991, serious clashes occurred between members of the Union sacrée de l'opposition and the security forces. The Conference suspended its activities from September to November 1991 and in January 1992. On 23 January 1992, military opponents of the regime occupied the National Radio station in Kinshasa and called for a change of government and for the National Conference to resume its activities. Two persons lost their lives during these incidents, which the Prime Minister described as "an attempted coup". The leaders of the unsuccessful coup were sentenced to death *in absentia*.

36. The population continued to express openly its support for the Conference and its dissatisfaction at each suspension, as was demonstrated by the "Christian marches" in 1992. The subsequent repression caused many deaths and injuries, and gave rise to attacks on opposition leaders. Acts of violence occurred throughout the country.

37. The Presidents of the Conference were Isaac Kalonji and Monsignor Monsengwo, Bishop of Kisangani, the latter enjoying the confidence of the opposition. During this period there was also a change of Prime Minister, Etienne Tshisekedi assuming the office on two occasions.

38. The Conference appointed 23 committees which were assigned various tasks, including the drafting of a new constitution. Two committees were also set up to deal with "delicate matters", one to investigate murders and cases of rape and the other to look into questions of corruption and property acquired dishonestly. The reports submitted by these committees led to an attempt by the President's supporters to put an end to the work of the Conference.

39. On 4 August 1992, the National Sovereign Conference established a transitional institutional order by its approval of an Acte portant dispositions constitutionnelles relatives à la périod de transition, in order to put an end to the political and institutional crisis in the country. This Act, which referred to the country as "Congo", defined the duties and powers of the President (art. 40), of the Prime Minister, of the Supreme Council of the Republic (art. 41) and of the courts. The Act also stated that the Prime Minister should be elected by the National Sovereign Conference and that his election should be ratified by the President within 48 hours (art. 71).

40. On 6 December 1992, the National Sovereign Conference completed its work by proposing an electoral time-table that was to begin in January 1993 and conclude with general presidential and parliamentary elections in August 1994. The National Sovereign Conference also complied with the provisions of articles 51 and 52 of the Acte portant dispositions constitutionnelles relatives à la périod de transition by designating the 453 members of the Supreme Council of the Republic (HCR), which became the Parlement de Transition. Monsignor Monsengwo, Bishop of Kisangani, namely, the President of the National Conference, was appointed President of HCR.

41. The Supreme Council did not last long. On 11 December 1992, the President suspended its work and the military prevented deputies from entering its premises. This action gave rise to further demonstrations of discontent, and their repression resulted in deaths and injuries, as well as attacks against the press. On 17 December 1992 the Parlement de Transition was able to meet for the first time, despite the fact that the President persisted in refusing to recognize the Prime Minister's authority. Relations between the President and HCR continued to deteriorate because of HCR's support for Prime Minister Etienne Tshisekedi. A series of incidents that began in January 1993 resulted in hundreds of victims, including Phillipe Bernard, the French Ambassador who, according to the official version, was struck by a "stray bullet". At the origin of these incidents was a presidential ordinance concerning monetary reform. Its application meant that soldiers were to be paid in new zaire banknotes, which were regarded as worthless by Etienne Tshisekedi and some of the population.

42. Owing to differences of view in political circles concerning the institutional order, the President, who had never been in agreement with the leaders of the Conference, convened a Conclave of his supporters that was made out to be a new national conference but was confined to persons and parties connected with the Mouvance presidentielle, that consisted of all the parties connected with the President. This Conclave, by Law No. 93/0001 of 2 April 1993 portant Acte Constitutionnel harmonisé relatif à la période de transition, established a new transitional institutional framework. The Conclave illegally invalidated the decisions and resolutions of the National Sovereign Conference and, by consensus, appointed the former opposition figure Faustin Birindwa as Prime Minister.

43. On the pretext of recovering State property, Birindwa ordered members of the Presidential Guard to search the home and offices of Etienne Tshisekedi, whom HCR continued to recognize as Prime Minister. The violence associated with this operation resulted in a large number of injured among Tshisekedi's supporters. On 6 April 1993, soldiers once again prevented HCR from functioning.

44. The existence of two irreconcilable governments in the country made the political situation become impossible. Birindwa's Government, which occupied the ministerial offices, followed the dictates of the Conclave, whereas that of Tshisekedi, which possessed neither offices nor any real power, followed the wishes of the National Sovereign Conference. This situation resulted in a duplication of institutions and constitutional texts during the transitional period, and not only gave rise to confusion but also paralysed State machinery.

45. Tshisekedi requested the United Nations for a peace-keeping force. The Secretary-General called upon Lakhdar Ibrahimi, the former Minister for Foreign Affairs of Algeria, to work out some form of mediation. His mission, in July 1993, failed to produce the desired results. Neither did the mediation attempts of the Organization of African Unity, through Salim Ahmed Salim, its Secretary-General, in May, or of Sam Nujoma, the President of Namibia in July 1993, find a way of reconciling the two parties.

46. The opposition tried to bring the parties together by endeavouring to reconcile the decisions of the National Sovereign Conference with those of the Conclave and thereby put an end to the duality of institutions. In October 1993 a Protocol of Agreement was concluded between the forces of the Conclave under Nguz Karl-i-Bond, the former Prime Minister, and USOR under Roger Gisanga A Gidiata. The Protocol gave rise to the Acte Constitutionnelle de la Transition (Transitional Constitution).

47. The Protocol designated the transitional institutions and authorities, such as the President, Supreme Council of the Republic - Transitional Parliament (HCR-PT), the Transitional Government, the courts and tribunals. It also specified that the public services were to be neutral and that there were to be no disputes during the transition. HCR-PT was to consist of members of HCR elected by the National Sovereign Conference, the members of the former National Assembly elected in 1987 (most of whom belonged to the President's party), whose terms of office had already come to an end, and the negotiators of both sides. HCR-PT would consist of 730 members in all.

48. On 9 April 1994, the President promulgated the Transitional Constitution, which the present Government regards as the Constitution in force. It reflects the general ideas of the Protocol and creates a political division on the basis of "families", making a distinction between "the family of the President" and the "family of the opposition".

49. Article 78 of the Constitution states that the Prime Minister is the Head of Government and should be put forward by the political family to which the Head of State does not belong, once the necessary consultations have been completed. It accords the Head of State impunity in respect of acts not constituting treason or intentional infringement of the Constitution and confirms his title as Supreme Commander of the Armed Forces. The Prime Minister and the other members of the Government, on the other hand, are held criminally liable for acts committed in the performance of their functions (arts. 41, 93 and 94).

50. The Transitional Constitution provides for the immediate establishment of the National Electoral Commission and fixes the duration of the transition period at 15 months from the date the Constitution enters into force. In other words, the new authorities, elected by popular ballot, are to assume their functions on 9 July 1995 (arts. 117 and 120). Article 119 states that the present President of the Republic will remain in office until the elected President is invested.

51. On 14 June 1994, HCR-PT appointed Mr. Kengo Wa Dondo (who is not recognized by USORAL as belonging to a political family different from that of the President) as Prime Minister. On 14 July 1994, the Prime Minister presented his Government which contained not a single USORAL member. Only 330 of the 740 members of HCR-PT voted for Prime Minister Kengo, and for this reason the opposition regards his appointment as null and void. It therefore called upon Monsignor Monsengwo, President of HCR-PT, to request the Supreme Court to determine whether Kengo's appointment was lawful. Monsignor Monsengwo failed to transmit the opposition's request.

C. The Legislature

52. The 1967 Constitution made provision for a parliament called the National Legislative Council, that was subsequently to go by the name of National Assembly, consisting of 250 deputies or "people's commissioners", elected by the Mouvement populaire de la révolution (at that time the single party recognized as the party of the State) and subsequently referred to the people for approval. The last legislature was elected in 1987, four years previously, and since then no further elections have been held.

53. As has already been explained, the composition of the legislature was modified in accordance with what had been agreed upon at the National Conference, which had called it the Supreme Council of the Republic (HCR) consisting of 453 delegates designated by the National Sovereign Conference. Later on, the Protocol of Agreement called for the amalgamation of the Supreme Council with the former National Legislative Council, whose term of

office had come to an end in 1991, to form the Supreme Council of the Republic - Transitional Parliament (HCR-PT). The political representatives of the "political family of the President" recovered their parliamentary majority in this new body.

D. The Judiciary

54. Under the Organic Law of 31 March 1982, the Judiciary consists of:

(a) Magistrates' courts dealing with minor offences in each town or rural area;

(b) Thirty-two courts of major jurisdiction in all towns and subregions. They deal with offences punishable by over five years' imprisonment, as well as with appeals against the decisions of the magistrates' courts;

(c) Courts of appeal in each of the 11 regions which, at second instance, review cases in which judgement has been passed by the courts of major jurisdiction. In addition, they are the courts of first instance for offences committed by judges, public officials and dignitaries of the "Order of the Leopard";

(d) The Supreme Court of Justice, sitting at Kinshasa, is the sole court competent to deal with offences attributed to ministers, regional governors and peoples' commissioners (members of Parliament). This is why the case involving the Lubumbashi incidents which occurred in the night of 11 to 12 May 1990 and that in which the main defendant was the Governor of Shaba were tried by the Supreme Court.

55. In principle, the military courts deal only with offences committed by servicemen. In the case of certain offences, military jurisdiction may be extended for a period of five years beyond the date on which a serviceman's active duty came to an end. However, the following are also subject to military jurisdiction: civilians accused of belonging to "rebel bands"; those who incite servicemen to commit offences; co-perpetrators or accomplices of servicemen; persons accused of treason; and persons accused of the illegal possession of military weapons (arts. 127 et seq., 431 and 457 of the 1972 Code of Military Justice).

E. The Executive

56. Under the Transitional Constitution of 1994, the Government consists of two elements, namely, the President of the Republic and the Government proper, headed by a Prime Minister who should belong to a "political family" other than that of the President.

57. The President is the Commander-in-Chief of the armed forces and is the person who really exercises power in the country. Marshal Mobutu Sese Seko Kuku Ngbendu Waza Banga has been in power since the coup d'état of 1965. In the last elections of 1984 held under a single party system, Marshal Mobutu, as the only candidate, obtained 99.16 per cent of the vote. A 1990 constitutional amendment and the Transitional Constitution of 1994 allow him

to remain in office until the next presidential elections; however, since neither the date of the elections, the method of election, nor the President's term of office have yet been determined, he is, for the time being, in office sine die.

58. The Transitional Constitution provides for a period of transition that is to end on 9 July 1995. Yet there is nothing to say that this time-limit will be respected, and the Constitution itself states that the current President will remain in office until the authorities that are elected assume their functions.

59. At the present time, the Prime Minister is appointed by the President on the proposal of HCR-PT. In theory, the Prime Minister governs the country, but in practice it is the will of the President that prevails, since the Prime Minister has absolutely no control over the armed forces and police and since the President's "political family" accounts for the majority of HCR-PT.

60. In the speech he made on assuming office, Prime Minister Kengo announced his intention of putting an end to insecurity, the ill-treatment of the population, the improper functioning of the judiciary and pillaging by the army. It is worth mentioning that among the measures adopted by his Government was a decision to release political prisoners on 5 August 1994. Similarly, on 20 August a government commission was set up to consider new legislation concerning the press, and on 27 August the Prime Minister visited Shaba in order to find a solution to the conflict between Shaba and Kasai. In December 1994, the Prime Minister submitted a draft law on the National Electoral Commission to HCR-PT.

F. The armed forces, security forces and police

61. Mobutu has been Commander-in-Chief of the armed forces since 1993, and this fact has been recognized in all the constitutions, agreements, protocols or acts adopted since then.

62. The Director of the Office of the President, Professor Vunduawe Te Pemako, emphasized to the Special Rapporteur that the President is indeed in command of the Zairian armed forces (FAZ) and "has personal links with all army officers. He has trained, appointed and promoted them. All are loyal to him and indebted to him".

63. The former Special Rapporteur on summary or arbitrary executions, Mr. Wako, was expressing a stark reality - which was also apparent to this Special Rapporteur from all the evidence received - when he said "The State security apparatus operative in Zaire is comprised of a complex tangle of civilian agencies and military units, effective control over which is lodged in the Presidence ... dispositions dictating 'decentralization' are not always clear in law and ... certainly do not correspond to practice". And he added: "At least since President Mobutu ascended to power, the security apparatus has been assured a secure and privileged ranking in the political power structure of the Zairian State" (E/CN.4/1992/30/Add.1, paras. 60 and 61).

64. The evidence received by the Special Rapporteur indicates that it is very difficult to determine which service or section participated in any given

operation, since the uniforms of their members do not have distinctive insignia, nor are their functions known to the population. The colonel commanding the Civil Guard of Goma, capital of Northern Kivu region, told the Special Rapporteur in so many words that "The functions of the Gendarmerie and the Civil Guard are the same".

65. President Mobutu Sese Seko's regime is a military regime. FAZ consist of about 60,000 men, of whom almost 30,000 belong to the Gendarmerie. The air force is reported to consist of about 3,000 men and the navy of less than 2,000.

66. Officials from the Equateur region, and particularly those of the Ngbandi ethnic group to which the President belongs, wield enormous influence within the army. "Over one-half of the generals fit both descriptions", the Special Rapporteur was told by Prime Minister Kengo. FAZ comprises 31 operational brigades, of which the paratroop brigade is the most important, and 11 districts.

67. The Civil Guard consists of some 12,000 men and has a military structure. Established in 1984, it is responsible under the law "for supervising State security and ensuring the maintenance and restoration of public order". If called upon to take action, "it assumes responsibility for all the normal functions of the Gendarmerie", a circumstance that is particularly likely to result in errors of identification by the population. Its supreme commander is General Baramoto, who played a leading role in the incidents at Lubumbashi University in 1990. Mr. Peter Kooijmans, the Special Rapporteur on torture who visited the country in 1990, said that the Civil Guard was "directly responsible" to the President of the Republic. It is unquestionably a repressive force and uses a large number of informers. The Civil Guard polices the everyday activities of the population, as well as airports, frontiers, etc. The Forces d'action spéciale (FAS), which previously belonged to the Agence nationale de documentation (AND) and are specialized in the suppression of public demonstrations, were incorporated in the Civil Guard, which also comprises specialized units such as the Forces d'intervention rapides (FIR) and the Forces d'intervention spéciales (FIS).

68. The Special Presidential Division (DSP) was created in 1985 as the Special Presidential Brigade, and is headed by General Nzimbi Ngbale Kongo Wa Basa who is from the Equateur region and of Ngbandi origin. It is the most feared of all the forces. Although it consists of soldiers and has military discipline and structure, it is not part of the army. No figures on its exact size are available, although sources indicate that it consists of between 6,000 and 10,000 men and comprises foreign mercenaries. It is the force that is the best trained and equipped (an élite force), the best paid, obviously privileged and the only one that is paid on time. It is blamed for the worst abuses. Although its function is to ensure the security of the Head of State, it frequently participates in the suppression of peaceful demonstrations or disturbances, in many cases thousands of kilometres from where the President happens to be. It has been said to be responsible for abuses against refugees in the Goma zone. Very often it is confused with other military bodies.

69. Although the function of the Military Action and Information Service (SARM) is to conduct purely military investigations such as counter-espionage,

it exercises considerable political control over the population. It consists of two sections, one concerned with action and the other information. Its sphere of action is similar to that of the former Agence nationale de documentation, and it handles all information concerning threats to President Mobutu. It has been under the command of General Mahele Lieku Bokungu, also from the Equateur region.

70. The National Intelligence and Protection Service (SNIP) replaced the Sûreté nationale, later called the Centre national de documentation, Centre national de recherches et investigations and Agence nationale de documentation (AND). These bodies were amalgamated in 1990, and the National Immigration Agency (ANI), which had been responsible for counter-espionage activities, was also incorporated in SNIP. Its function is very similar to that of other services. It is responsible for State security and acts as the aliens police. It consists of two branches, namely, the Domestic Department (SNIP-DI) and the External Department (DE). It used to be under Admiral Mavua Mudima, the present Deputy Prime Minister and Minister of Defence, but at present it is headed by a civilian. AND is responsible for collecting information on political, economic, social and cultural matters, as well as for other matters connected with State security, including supervision of the movements of suspicious persons. The events that occurred at Lubumbashi University indicate that it also has an operational function.

71. The Gendarmerie which has a strength of some 30,000 and a military structure and discipline has, in point of fact, been a FAZ body since 1972. It is badly equipped and even more badly trained, which is why it is associated directly with "pillaging". It is said to act brutally and seems to be hated by the population, especially because of its ill-treatment of detainees. It runs the district prisons. It is also responsible under the law for ensuring public safety and the maintenance of order and for law enforcement. Until a few years ago it was headed by General Bolozi, the President's brother-in-law, and at present it is commanded by General Amela. Its presence is particularly apparent in the capital.

72. The Gendarmerie comprises certain special branches. For example, the Brigade mobile is responsible for dealing with delinquency, and the Brigade spéciale de recherche et surveillance (BSRS), which in Kinshasa investigates the most serious offences, usually deals with political offences.

73. To the above must be added the general staff of FAZ, which also has its own Information Department and usually has a hand in making arrests; the staff of the Gendarmerie, similar to the latter; and the National Security Council, responsible for coordinating this vast network of services. The Special Rapporteur knows of arrests that were carried out by various security services.

74. The Special Rapporteur was informed of the existence of the BAKI or HIBOU regiment. Formed in 1981, in Bas-Zaïre, it is said to comprise some 100 individuals, all of Ngbandi origin, who had previously worked in DSP and FIS. Trained in methods of suppressing urban guerrillas, this group, which is of a paramilitary nature, usually operates at night, terrorizing the population by means of sabotage, pillaging, abductions and other "dirty war" tactics.

75. It was explained to the Special Rapporteur that this proliferation of services apparently so similar to one another was based on a policy conceived by the President to create rivalry between various services and to grant powers to the most loyal generals by, for example, giving them command of various services, which he could withdraw whenever he saw fit to do so.

76. The eminently political role played by these military bodies is also of interest. In October 1992, for example, after the Governor of the Bank of Zaire had been suspended by Prime Minister Tshisekedi, units of the Civil Guard were deployed in front of the Central Bank, Ministry of Finance and the National Assembly. Similarly, on 3 December 1992, dozens of armoured vehicles surrounded the Prime Minister's offices, access to which was blocked by the Civil Guard. During the same period, the security forces prevented the Supreme Council of the Republic from entering the Palace of the People and, again in February 1993, prevented it from meeting. In the same month, the army announced its rejection of the Acte portant dispositions constitutionnelles relatives à la période de transition approved by the National Conference.

G. Impunity enjoyed by the security services

77. The impunity with which these services act is quite flagrant. Very few members of the military or police are called to account, and when they are it is often in response to international pressure. This is what happened in the case of some of those responsible for the incidents at Lubumbashi University, and particularly Governor Koyagialo, the National Director of ANI, Gata Lebo Kete and others. The almost summary trial of the six soldiers who were sentenced to death at first instance for pillaging humanitarian aid supplies in the camps for Rwandese refugees of the Hutu ethnic group in Goma would seem to be due to the same reasons. On the other hand, no punishment was meted out for the extensive pillaging that took place in previous years; nor have any acts of torture been punished.

78. Many soldiers have admittedly been imprisoned and the Special Rapporteur had occasion to talk to some of them in the Ndolo and Mbuji Mayi prisons. Moreover, while in the country, the Special Rapporteur was informed that a soldier had been sentenced to death. Yet none of these cases involved accusations of human rights violations. Most of the persons concerned had been imprisoned for military offences (desertion and dereliction of duty) or for offences under the ordinary law without political motives, such as wife murder.

79. Impunity and, consequently, the repetition of culpable acts is encouraged by political justification, either tacit or explicit. Justification is tacit when "anything goes", as in the case of pillaging. The authorities, aware of the financial needs of soldiers who are not paid, neither prevent such acts nor punish them. And it is explicit when public opinion is fed unreliable information about such acts. This is what happened, for example, in the case of the death of the journalist Adolphe Kavula Mishamba when the Kengo Government had already taken office (see para. 142).

80. Impunity is not only the absence of punishment (legal impunity). It is also of a political and moral nature, since it provides the perpetrators with a version of the facts that justifies their actions (confrontation, self-defence) or refutes evidence of their participation (suicide, accident).

81. Emphasis on the maintenance of order at all costs is a frequent cause of violence which, in many cases, costs lives or causes physical injury that could be avoided. The code of conduct for law enforcement officials contains specific provisions on the use of firearms which are completely ignored by the Zairian security forces.

82. So far, the Kengo Government has been unable to control this situation, whose existence it does not deny. The Prime Minister told the Special Rapporteur that one of his Government's objectives was to restore the authority of the State, including control of the armed forces which, in his view, "should be purged". The police, in his opinion, should be subordinate to the Government and not to the President. Yet it must be said that, after more than five months, namely, at the time of publication of this report, absolutely no progress had been made.

83. The Director of the Office of the President and his closest confidant also took the view that it was for the Prime Minister's Government to clean up the security services.

84. A number of additional factors, such as the lack of professional training, the vagueness of areas of competence, delays in army pay, the corruption of military leaders and the corporative spirit of military justice, also encourage impunity in the armed forces.

IV. ETHNIC AND REGIONAL RIVALRIES

A. Ethnic conflicts in Northern Kivu

85. The Northern Kivu region that borders on Rwanda and Uganda has some three million inhabitants, 1/ of whom approximately one-half are indigenous to the area, the rest belonging to the category of the Banyarwanda or persons of the Hutu, Tutsi or Twa ethnic groups of Rwandese origin. The Banyarwanda account for 80 per cent of the population of the Masisi area or the Bwito community, yet most public and government posts have almost always been filled by indigenous inhabitants.

86. The tribal problems in this region of Zaire are due to the frontiers of the country established by the Act of Berlin of 1885 and the Brussels Convention of 11 August 1910, under which many persons of the neighbouring State of Rwanda were annexed to Congo. Between 1939 and 1954 some 80,000 Rwandese were recruited by Belgian colonists to work on plantations. Following the removal of King Mwami Kigeri V in 1959, Tutsi political refugees arrived in the region, and this influx was followed by the clandestine emigration of persons endeavouring to join their families on the other side of the Rwandese frontier. Since July 1994, approximately 1.2 million Hutus from Rwanda have become refugees in Zaire, particularly in the vicinity of the town of Goma. Others have moved towards the Masisi, Rutschuru and Walikale areas in order to join the Banyarwanda Hutus already settled there.

87. The tension between the Hunde, Nyanga and Nande ethnic groups (also called Bahunde, Banyanga and Banande or indigenous inhabitants of the area) and the Banyarwanda, which was due above all to land distribution problems, has been exacerbated by political factors connected with electoral procedures 2/ and laws governing nationality.

88. From a legal standpoint, legislation on nationality is one of the main causes of the ethnic conflict. Decree Law No. 71-020 of 26 March 1971 granted nationality on a collective basis to the Banyarwanda who, thereby acquired certain rights, such as the right to vote and to stand for election. However, Law No. 81-002 of 29 June 1981 amended previous legislation granting Zairian nationality solely to those who could prove that their ancestors had lived in Zaire since 1885. The application of this Law, because of its retroactive nature, would revoke the rights acquired by the Banyarwanda.

89. Under the new Law, moreover, each individual would have to submit a formal application for naturalization. Owing to the reaction caused by this Law, the National Sovereign Conference ruled that it would be applied after having been amended in favour of the population and that, in nationality matters, the Transitional Government should respect acquired rights in order to prevent statelessness. It would appear that recent ethnic confrontations were due in part to the fact that the Hunde and Nyanga disagreed with this decision.

90. In March 1993, Hundes and Nyangas attacked the Banyarwanda Hutus at Ntoto market, west of Masisi. The conflict spread to Masisi, to the Bwito and Lubero communities, and the Walikale area. Some sources stated that Hunde civilians were supported by members of the Gendarmerie. Although the sources vary, there have allegedly been 3,000 or so deaths. In late 1993 and 1994, the conflict appeared to be latent, but stabilized. Some 150,000 people are reported displaced as a result of the 1993 conflict.

91. New ethnic clashes have been occurring since mid-1994, 3/ as a result of the arrival of the new Rwandese refugees. Many refugees have reportedly left the camps and settled in Northern Kivu, especially Masisi, Bwito and Kalehe, becoming part of the Banyarwanda Hutu population. This new wave of migration is said to be reviving the conflict and could again lead to serious ethnic clashes and extend the war in Rwanda to Zairian territory.

92. Clashes have resumed in Walikale, Masisi and Rutshuru. The Hundes allegedly attacked the communities of Katoyi, Osso and Bahunde and the villages of Ikobo and Chula. Hunde and Nyanga militias, probably fearing that an increase in the Hutu population might jeopardize their political power and land ownership, reportedly conducted raids in September and October 1994 in Osso, killing 146 persons (mostly Hutus), injuring others and stealing cattle. During the same period, more victims were reported in the neighbouring community of Katoyi.

93. Clashes between Hundes and Hutus allegedly forced the Hutu population to move to Ngungu, Kibabi, Ruki, Lukole, Katahandwa, Mashaki and surrounding areas. Likewise, Hutu refugees who had left the Katale camp and settled in Masisi reportedly came back to escape the conflict.

94. The Hunde ethnic group is accused of stealing cattle to sell it in Tongo and buy weapons. An illicit arms traffic is reported to exist but neither the source nor the extent of participation by the governmental authorities are known. The armed forces, especially the Gendarmerie, Civil Guard and the Special Presidential Division have been active on a large scale in the area, which has allegedly resulted in thefts and pillage. According to information received, the Zairian armed forces are setting up barriers in Sake, Tongo and Mabenga to prevent Rwandese refugees from entering the Northern Kivu interior, and it is feared that these clashes may soon worsen.

95. On another matter, various sources state that once the Rwandese Patriotic Front took power in Kigali, the Tutsis in the region began to return to Rwanda, voluntarily at first and now under constraint, because they have also been victims of attacks. During his visit to the Rwandese frontier at Goma, the Special Rapporteur was told that a total of 7,726 people of Tutsi origin had returned to Rwanda between 1 and 10 November 1994.

B. Situation of Rwandese refugees in Kivu

96. In early July 1994, approximately 1.2 million Rwandese Hutus sought refuge in Zaire after the victory of the Rwandese Patriotic Front (FPR). They were placed in camps in Kibumba, Mugunga, Katale, Kahindo, Tshondo and Kituko. The United Nations High Commissioner for Refugees (UNHCR) estimates this population to number some 727,000 persons. Another 98,000 reportedly settled outside the camps in Jomba, Tonga and around Goma. The Special Rapporteur visited the camps at Mugunga and Katale. The following groups exist among the refugees:

(a) Some 20,000 members of the Rwandese armed forces, living together with their relatives, mostly in the camp at Mugunga, who maintain the former military structure and would appear to possess weapons and be conducting military training;

(b) The interhamwe ("those who attack together") militias. Difficult to identify and easily confused with the civilian population, these militias are thought to be responsible for most of the massacres that occurred in Rwanda. They are said to be found in all the camps, especially in Mugunga, where it is believed that 80 per cent of the young people belong to them. They are also in possession of firearms, communications equipment and vehicles. They are opposed to voluntary repatriation of the refugees and impose their views on the rest of the refugees by force. Serious incidents occur regularly in the camps; for example, on 30 September 1994 members of the interhamwe militia killed a Rwandese boy scout. Some members of the refugee Hutu population in Zaire are caught in a cleft stick. On the one hand they cannot live in the camps and receive food aid without submitting to the dictates of the interhamwe. On the other, if they return to Rwanda, the new authorities in Kigali might consider them to be members of the interhamwe militias, which would jeopardize their safety;

(c) Political leaders and authorities of the former regime, most of whom live outside the camps;

(d) A civilian population that has organized its life in the camps by establishing food distribution structures and maintaining security, on the basis of the same political and administrative structure that existed in Rwanda: prefectures, communes, sectors and cells, each represented by a leader. It has also elected leaders other than politicians; however, the politicians generally control the refugees through the interhamwe. The refugees appear to be afraid to return to Rwanda because of threats made by members of the militias.

97. The arrival of the Rwandese refugees has caused the prices of basic commodities to rise (in a few days the price of potatoes rose from Z150 to Z400 per kilo, and that of a litre of beer from Z350 to Z2,500), a serious imbalance in the natural ecosystem and environmental pollution. The refugees are clearing entire mountainsides of trees for wood, even in the Virunga National Park.

98. Rwandese refugees have committed crimes against the population of Northern Kivu, such as robbing Zairian merchants, which often causes serious incidents between the indigenous population or security forces and the refugees.

99. Zairian military have also committed acts of vandalism against the refugees. When the refugees arrived, there were lootings and thefts of food, although such incidents have nearly disappeared today. During the Special Rapporteur's visit to the Ndolo military prison in Kinshasa, he was told of the case of six Zairian soldiers who had been sentenced to death for stealing humanitarian aid supplies intended for the Hutu refugees (see para. 137).

100. On 5 August 1994, in Karangala, north of the Kibumba camp, an incident between two Rwandese soldiers and one Zairian soldier who were fighting over a bottle of water allegedly ended with one of the Rwandese being shot and wounded. Likewise, on 12 September 1994, members of the Zairian Civil Guard reportedly shot refugees who were attacking them, causing three deaths.

101. New incidents are said to be increasing tensions between the local population and the refugees. On 27 November 1994, a member of the Civil Guard died from gunshot wounds inflicted by a Rwandese refugee. In reprisal, Zairian soldiers entered the Katale camp and reportedly began to shoot indiscriminately, killing 15 persons and wounding 50 others, mostly women and children. The incidents spread to Rutshuru, where Zairian soldiers apparently looted refugees' homes, with help from the local population, killing one person and injuring 19 others.

102. Zairian soldiers are also implicated in attacks against staff members of international organizations. On 12 November 1994, John Stewart, a staff member of the non-governmental organization Action Aid-Assist UK, was hit in the face and kicked several times in the chest by three soldiers who asked him for money. The Special Rapporteur spoke personally with the victim and saw for himself the marks of the blows he had received.

103. The tension and insecurity in the region have reportedly led the local population to organize a civilian self-defence system that might further aggravate the conflicts between the Zairian community and the refugees. On

27 November 1994, there was reportedly a forced repatriation of at least 26 Rwandese Hutu refugees, in flagrant violation of the principle of non-refoulement.

C. Regional conflicts in Shaba

104. The Shaba (Katanga) region is one of Zaire's richest in copper, cobalt and zinc production. In 1992, its population numbered some 5 million persons, of which approximately 1.5 million came from Kasai.

105. The Kasai population in Zaire numbers approximately 10 million people. Kasai is the region of origin of Etienne Tshishekedi, President of the Union pour la démocratie et le progrès social (UDPS) and leader of the opposition. Most of the people from Kasai who were living in the Shaba region belonged to the Luba or Baluba ethnic group. Although the ethnic origin of people from Kasai and Shaba is the same, for historical reasons a separation occurred which gave rise to the Luba or Baluba of Kasai (Luba-kas) and the Luba or Baluba of Shaba or Katanga (Luba-kat). Precisely because of this common origin, the conflict in Shaba should be considered as regional rather than ethnic. Because of the political manipulation that has occurred in this conflict, the most appropriate term is political-regional conflict.

106. Shortly after Kyungo wa Kumwanza took over as Governor in 1991, the first incidents against people from Kasai began in Fungurume, Pueto and Biowa-lez-Bukama. When Etienne Tshishekedi was appointed Prime Minister by the National Sovereign Conference in 1992, Nguz Karl-i-Bond, originally from Katanga and his predecessor in the post, left the post and was appointed Special Adviser to the Office of the President. In response to the jubilation of the Kasai inhabitants of Shaba and the slogans against Nguz and Kyungo by UDPS supporters, the Governor of the region allegedly used the JUFERI to end the provocations. The JUFERI, or Jeunesses de l'Union des fédéralistes et des républicains indépendants, the party of Nguz and Kyungo, is a militia or paramilitary group allegedly responsible for the security and intelligence system of the Governor of Shaba.

107. On 20 August 1992, the President of the Republic sent Nguz Karl-i-Bond to the region to inquire into the events. The latter allegedly made speeches against the Kasai, accusing fanatical supporters of the new Prime Minister of instigating violence in the region. The Kasai, to escape the violence unleashed against them by the JUFERI and the "Youth of Katanga" gang, took refuge in the Likasi and Kolwezi train stations, hoping to return to their region of origin. In June 1993, some 75,000 people were living in a displaced persons' camp in the Likasi train station in hopes of finding transport back to Kasai. Another 23,000 people were in Kolwezi and some 11,000 in the village of Mwene Ditu, the first station in Kasai, which gives access to Kananga, Mbuji-Mayi and Kabinda. The trains are not at all regular and carry 2,000 to 3,000 people. There have been many deaths reported, especially children, owing to the hardships suffered during the trip.

108. It is calculated that, since the conflict began, from 500,000 to 850,000 people have returned to Kasai and some 500,000 to Kasai Occidental. Some sources indicate that a large number of persons have died as a result of violence or during the trip. The human tragedy has also brought about serious

economic and legal problems. Displaced persons living in Kasai, who had been working for the Gecamines State mining company and had acquired deeds to their houses, allegedly lost their property, which was taken over by Gecamines.

109. Although the violence has decreased in Shaba, acts of intimidation and harassment continue against people from Kasai, who continue to be refugees in various camps around the train stations. In 1994, there were some 65,000 persons in Shaba waiting to return to Kasai. Of those, 12,000 had taken refuge in a school in Likasi. This figure would be 30,000 if it included the people living around the school. The extremely poor living conditions in Likasi are aggravated by the fact that people cannot leave the camp without running the risk of being attacked.

110. There are some 16,000 displaced persons from Shaba living in the displaced persons camp at Bashala, some 8 kilometres from Mbuji-Mayi (Kasai Oriental). Some 3,400 people have been able to reintegrate and settle on plots of land on the outskirts of the camp. The Mwene-Ditu camp had to be closed in late October for lack of resources.

111. The following are the basic priorities for displaced persons:

(a) Transport from Likasi and Kolwezi to Kasai Some non-governmental organizations are taking them as far as Luputa and Gandajika to integrate them by means of agricultural reinsertion programmes;

(b) Reintegration of the people living in displaced persons camps in Kasai, which would require obtaining plots of land and training them in agricultural work.

112. The authorities' reaction to the problem has been negative. The non-governmental organizations have been supplying the assistance needed. It should also not be forgotten that the authorities in the region are the very ones who created the political problem. Both the Governor of the region, Kyungo, and Nguz Karl-i-Bond made statements inciting people to violence. These incitements to hatred were politically motivated, and directed against Etienne Tshisekedi and his supporters. On one occasion, Karl-i-Bond allegedly stated that if Etienne Tshisekedi were elected Prime Minister, the region would become ungovernable. It should be added that there appear to be no police or judicial investigations whatsoever to identify those responsible for the attacks. They are enjoying complete impunity, which would seem to indicate a tacit agreement with the authorities.

113. The Kengo Government has shown concern at the situation and sought to put an end to the conflict. During his visit to the region, the Prime Minister recognized the need to provide immediate transport and made an appeal for an end to the violence against people from Kasai.

V. HUMAN RIGHTS AND DEMOCRACY

114. It is impossible to analyse the human rights situation in a country independently of its political context. Whether or not human rights are respected is a highly political question.

115. The right to political participation is formally laid down in both the Universal Declaration of Human Rights (art. 21) and the International Covenant on Civil and Political Rights (art. 25). It was proclaimed in the Declaration of Independence of the United States of 1776, which stated, "That to secure these rights [the inalienable rights to life, liberty and the pursuit of happiness], Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness". The Declaration of the Rights of Man and of Citizens, of August 1789, states, "The end of all political associations is the preservation of the natural and imprescriptible rights of man; and these rights are Liberty, Property, Security, and Resistance of Oppression". (art. 2).

116. Denial of the right to political participation is a human rights violation in itself. However, it is also the source of all the other violations. Behind any consistent pattern of gross human rights violations, a shameful, antidemocratic regime trying to impose an unaccepted political agenda on the people can always be found. Governments that deny their subjects the right to free and egalitarian political participation can only be maintained by force and by repressing the people's demands for freedom. To be a part of society implies the right and duty to participate in the management of its affairs, and it is not legitimate for leaders to prevent the citizens from exercising their rights or fulfilling their duties.

117. The Special Rapporteur is not claiming that democracies - real and not in name only - cannot produce human rights violations. They do occur, but with a different connotation, since the unlawful act usually draws a lawful consequence, such as punishment of the violator and compensation of the victim. The independence and proper functioning of the judiciary, together with control by a public opinion that is duly informed by media enjoying freedom of expression and opinion, are effective checks on repressive policies that ignore human dignity.

118. While democracy cannot ensure full respect for human rights, lack of democracy ensures their violation. Democracy is a pre-requisite for, although not a guarantee of respect for human rights. Dictatorship is a guarantee of violations. These ideas are quite relevant to the current situation in Zaire.

A. Current political situation

119. The last presidential election was held over 10 years ago, and with a single candidate. The term of office at the time those elections were held was seven years; it has now expired and been renewed only by agreement of the top political leadership.

120. The last parliamentary election was held in 1987, with the terms expiring in 1991. It was not a free election, since all the candidates belonged to the single party, which was also the State party. By agreement of the political leadership, the expired terms of those representatives of the people were renewed in 1994. The last municipal elections, held in 1987, were cancelled, with the mayors or their deputies remaining in office.

121. Since assuming power in 1965, President Mobuto Sese Seko has on five occasions announced that power would be handed over to civilians or that the institutions would be undergoing a democratic transition; the three latest such announcements were made between 1990 and 1994.

122. The current transitional process, which began on 9 April 1994, is expected to last 15 months, ending on 9 July 1995. At the time this report was prepared, when over eight months had elapsed, no steps had been taken for authorities elected in free, multiparty elections to enter office on the date planned. The only measure that might be cited is that taken by Prime Minister Kengo, who submitted to the Transitional Parliament a bill governing the National Electoral Commission (composed of 14 members, 7 from each political family), whose function will be to organize and supervise the elections. However, the opposition holds that the bill is not in conformity with the agreements of the National Sovereign Conference and that it reduces the independence of the Conference by making it subordinate to HCR-PT.

123. The holding of elections implies that various prior requirements will be met; some of these are laid down in the Transitional Constitution of 9 April 1994 and others are matters of common sense. The Prime Minister, the Director of the Presidential Cabinet, Etienne Tshisekedi and other opposition leaders agree that the implementation of the process is dependent on:

(a) The establishment of the National Electoral Commission laid down in the Constitution;

(b) The adoption of an electoral budget and obtaining of the funds necessary for holding a census and elections;

(c) The conducting of a population census, which, in addition to the problems involved in the process itself, would require resolving the problem of the nationality of the Banyarwanda, i.e. people from Rwanda who have been living in the country for decades, particularly in the Kivu area. Some would even cite, in addition, the need for the refugees who came to Zaire following the events in Rwanda to return to their regions of origin, since it is feared that they will succeed in passing as Zairian. Given that most of the refugees are of the Hutu ethnic group and that they have been protected by President Mobutu, their continued presence in the country is considered to be a possible factor of distortion of the national will, to the benefit of the Mouvance présidentielle;

(d) The adoption of the Electoral Act, which implies a high degree of political agreement that the bill submitted to HCR-PT has not attained. The opposition adds the need to liberalize the media, such as radio and television, which are currently under the strict control of the President's forces. This is the prevailing situation, with the exception of a few timid steps forward, which will be explained later on.

124. The continued failure to act on any of the announcements of democratization has caused the Zairian people enormous frustration and disillusionment, reflected in a loss of confidence in the "political class". The agreements concluded by political leadership have discredited the National Sovereign Conference in the eyes of a people who had been its main encouragement and support.

125. The existence of "political families" (the Mouvance présidentielle or Force politique du conclave, on the one hand, and the opposition on the other) leaves little room for intermediate positions. Anyone who attempts to bring the two sides together - such as Monsignor Monsengwo - is often called a traitor. The opposition holds that, under the Acte portant dispositions institutionelles relatives à la période de transition of August 1992, there is no room in the country for intermediate positions. Since the paralysis of the democratic process favours the status quo, it is obvious why Mouvance présidentielle does not appear to be interested in the democratic transition process.

126. The "State is non-existent" was the sentence the Special Rapporteur heard most often in all his interviews in the country and abroad. The Director of the President's Office, the Prime Minister and the entire Government, the opposition, the Church, and even the most ordinary citizens all say so. An example of the non-existent State is the very long delay in paying public employees, including the military (with the exception of the Special Presidential Division), judges, police, teachers, doctors, diplomats, etc. Accredited diplomats abroad told the Special Rapporteur that their staff had not been paid for 30 months. In the past, delays had been as long as two years, but the Kengo Government has been putting the situation in order, so that currently the delay is two to three months.

127. Another example of the absence of the State can be seen in the hospitals (lacking the most basic elements for care of the sick) and the prisons (maintained through assistance from humanitarian organizations). The railroads and highways are in a deplorable state, to such an extent that the World Food Programme prefers to purchase rice from India or Pakistan, since it is cheaper and reaches those for whom it is intended more rapidly. However, although the State is absent when it comes to provide services to the community, it is very much present when it comes to political repression. The human rights violations described in this report have all been committed by State employees.

128. The Zairian people are asking for freedom and democracy, and have been doing so consistently, at least since 1977 when the expressions of discontent began. They are doing so with increasing intensity, because they are

convinced that the introduction of democracy can put an end to the state of political, moral, cultural and economic breakdown which they are experiencing, known as "the Zairian syndrome" (le mal zairois).

B. Civil and political rights

129. The Special Rapporteur informed the Government of allegations of human rights violations said to have occurred in 1994, but with a minimum of supporting evidence. However, he also received many other reports with insufficient information. The Special Rapporteur feels compelled to point out that he was also informed of deaths, cases of torture or disappearances that subsequent investigations conducted by the sources themselves or by other equally reliable sources proved not to have occurred. Such cases have not been included in this report, even when they were transmitted to the Government. In cases where clarifications were received from the Government, reference is made to the version supplied by the authorities. In some instances, the clarifications were provided to the Special Rapporteur orally, and in others, in writing, as in the case of the letter prepared by the Deputy Prime Minister and Minister of Justice in reply to a communication from Amnesty International addressed to Prime Minister Kengo Wa Dondo. A copy of the reply was sent to the Special Rapporteur by the Minister of Justice. However, the Government did not answer directly any of the Special Rapporteur's four letters mentioned in paragraph 15.

1. Right to life

130. The right to life is laid down in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Other texts adopted by the United Nations are the Code of Conduct for Law Enforcement Officers, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the Declaration on the Protection of All Persons from Enforced Disappearance.

131. The State has two obligations as regards the right to life. The first, most obvious one, is not to deprive anyone arbitrarily of life; the second, positive obligation, is to protect lives through the law.

132. The Special Rapporteur on extrajudicial, summary or arbitrary executions refers in his reports to various forms of attacks on the right to life. These are, death penalties that are not consistent with the tenets of the International Covenant on Civil and Political Rights or the Safeguards guaranteeing protection of the rights of those facing the death penalty; violations of the right to life during armed conflicts; deaths through excessive use of force by law enforcement officials; deaths in detention and executions by death squads or unidentified persons. Additional forms involve disappearances, as laid down in the Declaration on the Protection of All Persons from Enforced Disappearance: "Any act of enforced disappearance ... also violates or constitutes a grave threat to the right to life" (art. 1). The same Special Rapporteur also includes in his reports death threats and failed homicide attempts when the State's responsibility has been engaged through its agents or persons acting with its acquiescence or tolerance.

133. In resolution 1994/87, the Commission deplored "the continuing ... enforced disappearances, summary and arbitrary executions of persons who have exercised their right to freedom of opinion and expression ..." in Zaire.

134. According to the Zairian Association for the Defence of Human Rights (AZADHO), there were 91 summary executions in the first six months of 1994. Of those, 73 were the result of shootings or of torture during extortion and thefts or during political demonstrations. The pretext given is always the restoration of public order.

(a) The death penalty

135. The death penalty essentially applies to crimes under ordinary law such as murder, robbery with homicide, armed robbery, rape leading to death, and unlawful association. However, it also applies to political offences such as a vaguely defined "threat to State security". As a consequence of the military uprising of 22 and 23 January 1992, a higher court martial sentenced 17 military personnel who had demanded democratic reforms to death in their absence, although the penalty was not carried out because they had fled.

136. One illustration of the frequency of death sentences was provided by the Procurator-General of Kasai Oriental, who told the Special Rapporteur that in recent years the regional court of appeal had handed down the death penalty five times, although none of the sentences had yet been carried out, pending a decision by the President on their applications for clemency.

137. The Special Rapporteur spoke with a group of six military personnel who had been sentenced to death and who were in Ndolo military jail in Kinshasa. They had been sentenced to death for plundering goods destined for humanitarian assistance for the Hutu refugee camps at Goma. The Special Rapporteur saw for himself the marks of the torture they had undergone. There were open wounds on their ankles caused by the shackles they had had to wear for a long time. Their applications for clemency were pending.
Colonel Manzila, who had been sentenced to death at first instance, and who claimed that the minimum guarantees had not been assured at his trial, was also in Ndolo.

(b) Political assassinations

138. This heading includes those cases characterized by a clear desire to kill individuals who allegedly represent a political threat and a threat to national security or by a desire to mete out punishment to individuals for an act they allegedly committed or to others whose liquidation is intended to intimidate part of the population.

139. The Special Rapporteur listened to and read statements concerning a new method of eliminating opponents or critics of the regime, whereby detainees are injected with a toxic substance whose effect, which is generally fatal, comes about several days later.

140. The Special Rapporteur informed the Government of Zaire of allegations concerning the political assassination of the following individuals:
Pierre Kabeya, a journalist with the weekly Kin-Matin, who was murdered on

8 June 1994; Kabongo Kadila Nvezu, who was arrested on 11 July at the home of Etienne Tshisekedi, and who was allegedly injected with a toxic substance which caused his death in September 1994; Hakisimana Ndeze; Bagalwa Kationutimo Sepe Cikala, Jean Pierre Ruchumeza Bapolici and Claude Matoto Mwambusa, who died at the hands of members of the Zairian Armed Forces.

141. In its reply to Amnesty International, the Government said that the investigations under way into the death of Pierre Kabeya had found no evidence of political motives. In addition, the Government admitted that Kabongo Kadila Nvezu had been arrested and subsequently released. The Special Rapporteur has received no explanations from the Government concerning the other cases.

142. Particularly significant among the cases reported is the death of the journalist Adolphe Kavula Mishamba, who was kidnapped by military personnel on 28 October 1994. Kavula had written numerous critical articles about acts of corruption, for which he had been threatened. In its issue of 26 September 1994, the newspaper Nsemo (Light), of which he was the editor, carried a three column headline reading: "L'Editeur de Nsemo menacé de mort. Toute la rédaction pointée du doigt" (Nsemo's editor receives a death threat. All the paper's staff under threat). His disappearance was denounced and reported by the newspaper, but there was no official reaction whatsoever. On 6 November 1994, Kavula was found in a nearby wood; he was unconscious and had not eaten for several days. He showed no signs of having been tortured, although there was evidence that he had been injected. His wife said that all he managed to say was "torture". He died in hospital on 12 November 1994.

143. According to the verbal explanation provided by the Deputy Prime Minister and Minister of the Interior to the Special Rapporteur, there was no evidence that the armed forces had been involved in his death. The lack of an investigation during his disappearance was accounted for by his tendency to disappear without warning to pray in a monastery. As he was mentally disturbed, it was impossible to take the threats seriously. "The case raises no problems for the Government", was the Minister's conclusion. In the view of the Special Rapporteur, this explanation is unsatisfactory.

(c) Enforced disappearances

144. The Special Rapporteur transmitted to the Government allegations relating to the disappearances of the following persons: Theo Nsenene, Numbi Joseph, Kahenga Michel, Kalenga Augustin, Konba Admar and Kasiona, the President of UDPS in Lubero, although he failed to receive the explanations requested. The Special Rapporteur wishes to draw attention to the fact that a detained person is frequently considered to have "disappeared" when his whereabouts are unknown for a few days. No information is generally provided about his subsequent reappearance, whether he is free, in prison or dead. For this reason, the cases submitted to the Government contain no conclusive information about the person's fate. However, the Government is responsible for recording the admission of a detainee and for informing his relatives.

(d) Arbitrary deprivation of life by excessive use of force in putting down mass demonstrations or repressing crime, or in the performance of any public duty

145. The Special Rapporteur was told that the security forces frequently employed excessive force in breaking up public meetings and demonstrations, and that there was no evidence that those responsible had been punished. In 1993, the Special Rapporteur on extrajudicial, summary or arbitrary executions brought several individual cases to the attention of the Government of Zaire, one of which was a particularly serious case in which members of the Special Presidential Division had allegedly killed at least 15 civilians, including an 11-year-old boy and a pregnant woman, in reprisal for the murder of one of the Division's members.

146. In 1994, the Government of Zaire was informed of the death of a woman named Annie (surname unknown), a money changer who allegedly died on 2 February 1994 after having been shot by military personnel. No reply has been forthcoming from the Government.

(e) Arbitrary deprivation of life by military personnel, the police and the security forces, shielded by their authority and impunity and without the acts being justified by the performance of any public duty

147. The total impunity enjoyed by members of the military, the police and the security forces has led to indiscriminate use of armed force and disdain for human life, in order to obtain money or property. They operate either individually or in groups - the notorious "plundering expeditions" - and for the most mundane of motives, such as to jump ahead of a taxi driver in a queue for petrol. Although these crimes are not politically motivated, there is a political explanation: the excessive and indiscriminate power wielded by the troops.

148. The deaths of Valentin Lubuma Munsongo, Kasereka Mulongani, Pelele and Pauline Isuka (murdered by soldiers because they refused to give them money), Lucien Fongo Dinanga, a chemist working for the Tallophar company, a bus conductor and a person named Ramazani, can all be explained in this way. The Government has not answered these cases.

(f) Deaths under torture (see paras. 161 to 169)

149. The Special Rapporteur informed the Government of the cases of Mr. Tele, Patrice Wami Risasi and Patrick Kibwe Malangisha, who died under torture at the hands of members of the Gendarmerie and the Mobile Brigade. No reply has been received.

(g) Deaths of detainees

150. The Special Rapporteur has received consistent and repeated reports from humanitarian institutions concerning the deaths of persons in prison. The State must also be held responsible, on the grounds of its failure to perform its protective function, for the deaths which occur in prison as a result of illness, lack of food or care.

(h) Deaths through failure to perform the duty to protect life during tribal or regional conflicts

151. In the report already referred to, the Special Rapporteur on extrajudicial, summary or arbitrary executions said that he was appalled at the upsurge of inter-communal violence in Shaba and Northern Kivu. He forebodingly stated that "A pattern of inter-ethnic conflicts in a climate of total impunity seems to be emerging in the region, whereby events and developments in any of the neighbouring States of Rwanda, Burundi and Zaire have strong repercussions in the others" (E/CN.4/1994/7, para. 662).

152. In such circumstances, the Special Rapporteur believes that the Government bears ineludible responsibility, for the following reasons:

(a) The Government is obliged to protect life and to ensure that there is no kind of discrimination on any ground based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, in conformity with the provisions of articles 26 and 27 of the International Covenant on Civil and Political Rights;

(b) In accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the Government has the duty to protect minorities and to ensure that they may exercise fully and effectively all their human rights and fundamental freedoms;

(c) Regardless of this duty, statements by senior officials, such as the former Prime Minister Nguz Karl-i-Bond and the Governor of Shaba, Kyungu wa Kumwanza, have stirred up hatred against the inhabitants of Shaba from Kasai. Nor has the Government performed its duty to protect ethnic minorities, as it has insisted that identity cards contain information on citizens' ancestry and origin;

(d) The central authorities have given political support to those who promote or incite to hatred on grounds of race or origin.

153. There are numerous cases of mass murders or assassinations of members of the Kasai minority in Shaba and of the Banyarwanda in Kivu (see paras. 90 to 95 and 104 to 113). However, in Shaba at least, the situation has apparently been less serious during the second half of this year, possibly because of the efforts made by the Prime Minister Kengo Wa Dondo, who visited the region in August and stated his intention of averting a repetition of the tragic events of previous years.

(i) Political assassination attempts

154. The Government was informed of five allegations concerning attempts on the right to life of Alois Mulumba Kabeya, Ferdinand Lukaso Nd'jate, a group of traders from Bas-Zaire and a group of five unidentified individuals. In addition, Jean Pierre Ndiada, the son of an assistant of Etienne Tshisekedi, was allegedly attacked by four military personnel while returning from service with a church action group, on 6 September 1994. The soldiers, who were

masked, allegedly interrogated him about his father's activities. Finally, they reportedly injected two substances into him, forced him to eat a bitter-tasting powder and stole his money and documents. On 10 September 1994, the young man fell into a deep comma. Medical examinations found that he had been injected with an unidentified poison. The Government has not replied to these allegations.

(j) Death threats

155. The Special Rapporteur informed the Government of the death threats against Mohamed Masamuna, President of UDPS/Luila, in Bas-Zaire, and Leon Moukanda, editor of the Umoja newspaper in Kinshasa and his assistant Robert A'Koy; no reply has been received.

2. The right to security

156. Article 3 of the Universal Declaration of Human Rights proclaims that "Everyone has the right to life, liberty and security of person", which constitute three autonomous, but clearly interrelated and interdependent rights. Although article 9 of the International Covenant on Civil and Political Rights links the right to security of person with the right to liberty, it may be inferred from other provisions of the Covenant that the right to security is linked to all the rights recognized by that instrument. For example, article 2.1 requires each State party to respect and to ensure to all individuals all the rights recognized in the Covenant, while article 5.1 prohibits the State and individuals from engaging in any activity aimed at the destruction of any of the rights or freedoms recognized.

157. The Special Rapporteur has chosen to draw particular attention to the right to security as an autonomous human right which is linked not only to individual liberty, but to all the rights enjoyed by the human person, as a simple corollary of his human status, because he believes that it is one of those rights that is least observed in Zaire. With the exception of the country's highest authorities, no one in Zaire enjoys security of life, liberty, private property or physical or mental integrity, or equality before the law. Security is even more lacking where the enjoyment of economic, social and cultural rights are concerned.

158. Misappropriation and the widespread delay in the payment of the wages of the army, police and security forces have led to the increasingly frequent practice of "plundering" or in the best of circumstances, to the detention of individuals under the pretext of checking their identity but in fact to rob them. In these circumstances, many people told the Special Rapporteur that they were not sure of being able to return home safely after nightfall.

159. In this respect, the population has seen no change since the Kengo Government took power. According to the Ligue des droits de l'homme (League of Human Rights (Zaire)) "The Government has proved incapable of reducing the level of insecurity and daily violence which continue to beset the country" ("Les cent jours du gouvernement Kengo" (The 100 days of the Kengo Government), September 1994). That opinion is unanimously shared by the leaders of the main non-governmental organizations, journalists, churchmen and grass-roots and trade-union leaders interviewed, and it is simply the

unavoidable corollary of the Government's lack of control over the armed forces and the police, to which it undertook to put to an end in its inaugural address.

160. The Special Rapporteur was told that, since 1990, the Zairian population had suffered numerous "acts of plunder" by the security forces. In 1994, the Special Rapporteur received complaints concerning acts of plunder; on 17 January in Bukavu, seven civilians and two military personnel died as a result of acts of plunder; from 20 May to 3 June in the region of Basoko, the head of the community of Mobango-Itimbiri and members of the security forces and the military armed with military weapons and machetes stole cattle, poultry and money from the population; in early March, in the village of Nyoka. In addition, on 14 May 1994, four members of the Civil Guard allegedly stole film equipment from the Papy Palata film and video store. The Special Rapporteur was also informed that, in July 1994, military personnel identified as belonging to the territorial company of the Matete Gendarmerie pillaged the western district of the Kinsenso area. He was also informed of acts of plunder carried out by members of the armed forces during the same month in the Ngiri-Ngiri, Bumbu, Makala and Mont-Ngafula districts of Kinshasa. The Government was informed of these incidents but has not yet provided any clarification.

3. The right to physical and mental integrity and not to be subjected to torture

161. The right to physical integrity. Article 5 of the Universal Declaration proclaims: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". This provision is reiterated in article 7 of the International Covenant on Civil and Political Rights, which also prohibits anyone from being subjected, without his free consent, to medical or scientific experimentation. Article 10 of the Covenant adds, as a measure to protect individual integrity, the right of persons deprived of their liberty to be treated with humanity.

162. The physical and mental integrity of the person is further protected by the following instruments: the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the Standard Minimum Rules for the Treatment of Prisoners; the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

163. In 1994, the United Nations Committee against Torture examined the case of an asylum seeker in Switzerland who was of Zairian nationality. According to the Committee, the person could not be returned to his country because there were grounds for believing that he would be in danger of being detained and tortured on account of his ethnic origin and alleged political connections.

164. One common form of torture used on detainees, but which is also a form of physical violence used to put down mass demonstrations is the so-called "passer à tabac" "beating up". This, according to the report of the previous Special Rapporteur on summary or arbitrary executions, is a "brutal beating" which "is a typical form of torture administered to detainees of many organs of the State security apparatus" (E/CN.4/1992/30/Add.1, footnote 56).

165. All the sources consulted confirmed that torture was commonplace. In actual fact, during his visits to Makala, Ndolo, Goma and Mbuji-Mayi prisons, the Special Rapporteur heard statements by torture victims and saw the physical consequences of torture. The Special Rapporteur informed the Government of the cases of which he found evidence: Monga Ali, who was tortured on the premises of the BSRS; a 17-year-old youth, Tshianga Kaniki, who was imprisoned with adults and had allegedly been beaten; the case of the six military personnel sentenced to death in Goma who were in Ndolo military jail (see para. 137) and the case of the nine corporals accused of the January 1992 "coup" who spent 28 months in separate cells at the IIème Cité de l'OUA prison in Kinshasa.

166. Numerous female prisoners are allegedly raped, with the connivance of the authorities, and one witness said that in December 1993, in Mbuji-Mayi, Kasai Oriental, the Governor ordered the female detainees to be stripped in order to humiliate them. Rape is occasionally politically motivated.

167. The Special Rapporteur considers this form of torture to be particularly serious; he was informed of the case of Dominique Mvunirwa, who was arrested in January 1994 with other young people in the Essence and Nguba districts, in Bukavu; she was taken to the Civil Guard jail where she was allegedly raped, together with 13 other Rwandese girls. The Special Rapporteur was told that in April 1994 members of the Special Presidential Division stopped a jeep carrying students from Bandundu and allegedly raped the women and beat up the men, one of whom was Serge Okoka Kasongo.

168. In addition to the cases of torture leading to the deaths of detainees, already mentioned, the Special Rapporteur informed the Government of the following cases of torture of detainees (see paras. 145 to 148): Kambale Vulendewa, Pierre Mangwaya Bukuluku, M. Nsenene, members of the Partido Lumumbista Unificado (PALU); Ikwalnkwi, Ngombe, Marivina, Misongo, Kutunsana, Mimbani, Shayinzi, Salvador, Mambozo, Louisette Kibassa, Hubert Yuma, Botula, Angbongbo, Milunga, Ngunza, Thalo, Tshuadi Shakongo, Kalombo, his wife and sister, Kalambo Kilambo Timothee, Simón Yogo Ambake, Corneille Munanzumbe; and Kabisa, Kitambala, Kaungwa and Khenda, Gerard Mundonga-Kindu, Leon Muntuntu Kadima, a deputy of the Supreme Council of the Republic and the PALU leaders Muzela, Nguluzamba, Justin, Madimunga and Annie Lutongo Nakweti.

169. Attempts were also made against the physical integrity of individuals when mass demonstrations were broken up or simply in acts of seemingly unprovoked violence, as in the case of Muyuluke, Ngalamulume Nandevu and Dr. Mwenze, in January 1994 in the "Essence" and "Nguba" districts, in Bukavu.

170. Situation of the prison population. Prison conditions in Zaire are disturbing. The deterioration and neglect of the prison system mirrors the country's political and economic disintegration. There are 11 central prisons, 9 detention camps, 25 subregional prisons and 159 area prisons in Zaire. However, there are also numerous detention centres and jails run by each security service, such as those run by the National Intelligence and Protection Service (SNIP), the Military Action and Information Service (SARM), the Civil Guard or the Special Research and Surveillance Brigade (BSRS). There are reportedly hundreds of clandestine detention centres.

171. The Special Rapporteur visited the prisons of Makala (Kinshasa), Goma and Mbuji-Mayi, and Ndolo military prison (Kinshasa). He was also granted access to the jails of the Gendarmerie and the Civil Guard in Goma and of BSRS in Mbuji-Mayi. The following data on detainees were provided by the prison authorities:

Name of prison	Women	Convicts	Prisoners awaiting trial	Total number of prisoners
Makala	37	200	481	681
Goma	2	21	142	163 4/
Mbuji-Mayi	1	26	69	95
Ndolo	1	97	284	381

172. Conditions in the prisons visited were more or less the same. No renovation or improvements have been carried out since independence. Prisons were in a general state of total disrepair and insalubrity, with deplorable living conditions for prisoners. In Makala, some blocks frequently flood when it rains on account of the poor state of the roofs. Goma prison, where there was a fire some years ago, has still not been repaired.

173. As a rule, the prisoners are fed by non-governmental organizations, church associations and their own families. At Goma prison, UNHCR has provisionally taken over feeding some prisoners (Goma prison contains a number of Rwandese refugee prisoners).

174. Some prisons lack running water and the sanitary facilities are in a state of total disrepair. As a rule there is no electricity. Any showers there are are not in working order. The Special Rapporteur found only one working shower in block No. 1 of Ndolo prison. It is exceptional for there to be beds in the blocks, and the prisoners generally sleep on mats or on the bare floor. The lighting and ventilation of most of the cells is below minimum requirements.

175. Prison medical services are virtually non-existent and inadequate. The most common ailments are diarrhoea with bleeding, dysentery and tuberculosis. In Goma prison there were 53 cases of cholera (3 prisoners died in 1994). It is thought that a high percentage of the prison population has AIDS. In October, seven people died in Ndolo military prison from diarrhoea, and it was reported that the doctor rarely made his weekly visits.

176. It is common for sick prisoners to share the same block with healthy ones. Prison dispensaries lack basic medicines. If there is an emergency or serious illness, patients are rarely transferred to hospitals. Some seriously ill prisoners receive no medical treatment whatsoever. According to the reports received, at the time of the Special Rapporteur's visit to Makala there were 95 sick prisoners.

177. The lack of funds means that convicted prisoners are not separated from prisoners awaiting trial, who make up the vast majority. Some detainees may be held in prison for up to three years before being brought before the courts.

178. The situation of women in prison is better than that of men, probably because there are fewer female inmates. Segregation of women from men is respected; only at the military prison of Ndolo did the Special Rapporteur see a woman in the same cell block as men. Mothers can be together with their children in prison. At Makala, the Special Rapporteur noted that infants up to the age of six could be with their mothers if the mothers so desired.

179. According to information received, there were 47 minors at Makala prison sharing a cell block with sick persons, a matter to which the Special Rapporteur drew the prison authorities' attention. At Mbuji-Mayi prison, the Special Rapporteur talked to a minor who was in the same block as adults. The youth concerned had been arrested on 14 March 1993 at the age of 16 and had reportedly been remanded in custody for a month in the procurator's jail before being transferred to prison and had been whipped. The dates of arrest and entry into prison, as well as the charges against the youth, were confirmed by the prison register. The Special Rapporteur told the Civil Guard colonel in Goma that a 12-year-old boy called Buloba who had just been arrested in Sake for housebreaking and theft was being held in the Guard's jails without his entry being recorded. The authorities informed the Special Rapporteur that the boy would spend the night in the women's block.

180. In some prison centres, dangerous prisoners are chained up for the night in order to avoid possible escapes. At the military prison of Ndolo, the Special Rapporteur was able to see for himself the ankle wounds caused by iron fetters to a group of six soldiers sentenced to death. With the agreement of the authorities, the Special Rapporteur talked privately to a number of randomly selected prisoners, who testified to detention in garde à vue for more than the regulation 48 hours, lack of access to a lawyer and ill-treatment.

4. Right to liberty of person

181. The right to liberty of person is provided for in articles 3, 9, 10 and 11 of the Universal Declaration, articles 9, 10, 11, 14 and 15 of the International Covenant on Civil and Political Rights, and the Declaration and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The matter is also dealt with, in relation to prisoners, in the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Declaration on the Protection of All Persons from Enforced Disappearance,

and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

182. According to these texts, no one may be arbitrarily detained and, in the event of detention, the prisoner must be treated humanely and with due respect for the inherent dignity of the human being. The Working Group on Arbitrary Detention has considered detention to be arbitrary when it lacks any legal basis or results from the legitimate exercise of rights embodied in international instruments or when there is a failure properly to observe the rules of due process.

183. In Zaire, the rules of due process have not been respected for decades. In a reply to a letter from Amnesty International of 14 September 1994, of which he gave a copy to the Special Rapporteur, the current Deputy Prime Minister and Minister of Justice Gérard Kamanda wa Kamanda states that: "since, in most of the cases noted, the rules laid down by the Code of Penal Procedure with regard to time-limits, investigation, pre-trial detention, etc., had not been respected - which may demonstrate either the uneasiness of judicial police officers about qualifying the offences imputed to prisoners or the lack of sufficient justification for the arrest - all political prisoners have been released in accordance with the Government's decision of 5 August 1994 and in compliance with legal procedures".

184. One of the reasons for arbitrary detentions is the anarchy in the powers of the security services, which are all authorized de jure or de facto to carry out arrests.

185. Under the law, the arresting authority is obliged to bring the prisoner before the Government Procurator's Office within 48 hours following the arrest. If there is insufficient time to conduct inquiries, the Procurator-General may authorize an extension. Within five days after the prisoner has been brought before the Procurator, the latter must decide whether to hold him in pre-trial detention or to order his release. However, the 48-hour time-limit is not always observed, a point corroborated by testimony to this effect received by the Special Rapporteur. Monga Ali said that he had spent 53 days in BSRS cells before being brought before a magistrate.

186. Zairian law makes no provision for the institution of habeas corpus, in other words an effective action or remedy enabling the release of a detainee to be requested from the competent courts. Some non-governmental organizations (NGOs) frequently take up cases with the Procurator's Office calling for prisoners to be placed at the disposal of the courts, but they do not do so systematically.

187. Notwithstanding the contention of some NGOs that politically motivated detentions have continued during the Government of Kengo Wa Dondo, the Special Rapporteur is of the opinion that they have declined drastically and, in particular, that there no longer appear to be any political prisoners, other than the cases indicated in paragraphs 174-179.

188. On 5 August 1994, the Government ordered the release of political prisoners, and the vast majority of cases submitted to the Special Rapporteur predate Kengo's seizure of power on 14 July 1994. The decline in the number of political prisoners was confirmed by former Prime Minister Tshisekedi, who stated: "Nowadays there is another style of repression".

189. In 1994, the Special Rapporteur transmitted various cases of persons detained or allegedly continuing to be detained for political reasons. According to reports, the following persons were arrested prior to 14 July 1994: PALU activists Ikwalnkwi, Ngombe, Marivina, Misongo, Kutunsana, Mimbani, Shayinzi, Salvador and Mambozo, as well as Muzela, Nguluzamba, Justin, Madimunga, Annie Lutongo Nakweti and Malavu Mboma; persons close to the UDPS, Mudia, Etienne Tshisekedi, Kibumbu Kituhisila, Christophe Jumba, Jean Marie Lambala, Ilunga, Mwanba, Kunangidi, Kambi, Jose Kadima, Balambula, Molato Mukendi, Misuku and Bozi. The following cases of detention were also raised: Tshioma Tshioma, Kande Gerard and Vicky Makana (the latter two of Angolan nationality), Pierre Mangwaya Bukuluku, Kambale Vulendewa, Kisokero, Bangala, Kongolo, Tandia, Lambert Mende, Kabeya Matungulu, Leon Mutuntu Kadima and Muamba Kazadi. The arrests of Joseph Olenghankoy, President of Forces novatrices de l'union sacrée (FONUS) and of Willy Kalume Lualaba, activist of La voix des sans voix, were also reported.

190. The politically motivated arrest of Jean-Pierre Muiyarugamba Ntwalira, President of the Parti des nationalistes pour le développement intégral de la collectivité Bashali (PANADI), occurred after 14 July 1994.

191. In its reply to Amnesty International, the Government refers to the incidents that occurred on 11 July at the home of Etienne Tshisekedi, where a number of persons, including Bala Mbula, Hulongolo Bozi, Kadima Jose and Patrice Kambi, were arrested, although they were subsequently released. The Government states that they were arrested on charges of "criminal conspiracy, rebellion, assault and battery and failure to assist a person in danger", allegedly after attacking Civil Guard elements in the vicinity of Tshisekedi's home.

192. The Government also mentioned the arrest on 5 July 1994, for subversive activities and acts of sabotage, of Leon Mutundu Kadima. According to the authorities, he was released pursuant to the decision of 5 August 1994 to free all political prisoners. Kibumbu Kituhisila, Christophe Jumba, Jean Marie Lambala and Ilunga were also released on that day. The same communication refers to the case of Joseph Olenghankoy, who was arrested for spying and released the same day. The Government says nothing about the other cases.

193. Other cases of detention denounced as arbitrary, although apparently not politically motivated, which were brought to the Special Rapporteur's attention were those of Gérard Mundonga-Kindu and Gode Tshimanga Mutombo. The Government has not replied concerning these cases.

194. With regard to the following special cases of persons who were deprived of their liberty for political reasons and are still in prison, the authorities expressed their views orally to the Special Rapporteur.

195. The case of the three Burundi officials. Lieutenant-Colonel Sylvestre Ningaba, Major Deo Bugegene and Sergeant-Major Dominique Domero are three Tutsi officials of Burundi nationality who, separately and for differing reasons, came to Zaire after the foiled coup d'état in their country which claimed the life of President Melchior Ndadaye, on 22 October 1993. According to their testimony, Deo Bugegene opposed the coup, Domero fled because of the turmoil in his country and Ningaba, who was in prison on the day of the coup, was released and entered Zaire on 25 October 1993. Deo Bugegene wishes to forgo asylum and return to his country. The other two want guarantees of a fair trial.

196. The three were arrested in October 1993, apparently for illegal entry into the country and complicity in an assassination which, although not mentioned, would seem to be that of President Ndadaye. As explained to the Special Rapporteur by Prime Minister Kengo, the arrest was prompted by an extradition request made by the present Government of Burundi. Under the extradition agreement between the two countries dated 21 June 1975, the Government with which the request is lodged may order the accused person to be remanded in custody while the requesting Government formalizes the application, for which purpose it is allowed three months. The Government of Burundi requested extradition and remand in custody in April 1994, and the time-limit for formalization of the application expired in July of the same year. For that reason, the Advocate-General of the Republic attached to the Public Prosecutor's Office ordered the release of the persons concerned on 10 August 1994.

197. Nevertheless, the three officials continue to be held in prison without cause, despite the considerable efforts made by their defence counsel. If the Government of Zaire does not want them to remain in the country, the appropriate procedure would be to release them and expel them to a country in which they would not have a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, in accordance with the 1951 Convention relating to the Status of Refugees. None of the three has committed offences in Zaire, and article 31 of the Convention prohibits penalties from being imposed on asylum-seekers merely on account of their illegal entry, particularly when they satisfy the requirement of presenting themselves without delay to the authorities.

198. The Minister of the Interior denied that they were treated as political prisoners, but he added that they had not been released for reasons to do with policy towards Burundi. There is no doubt that the cause of the detention is the eternal "reason of State", and they are accordingly political prisoners.

199. The persons convicted in the "La voix du Zaïre" case. This is also a political affair, since the indictment and conviction in first instance results from the revolt of dissident soldiers of President Mobutu's regime, who seized the Zairian National Radio in January 1992. The Special Rapporteur considers it disturbing that the appeal lodged by the persons concerned has not yet been decided, although the judgement in first instance was handed down

on 4 April 1992. He is also concerned by the detention conditions to which they have been subjected during the past 28 months in the IIème Cité de l'OUA prison. The Minister of the Interior told the Special Rapporteur that the description of prison conditions in the IIème Cité de l'OUA was a myth.

5. Right to freedom of movement

200. One of the most important manifestations of liberty of person is freedom of movement, consisting in the individual's right to move freely within the territory of the State in which he lives and to take up residence at any point therein, as well as his right freely to enter and leave the territory of the country of which he is a national, in accordance with article 13 of the Universal Declaration and article 12 of the International Covenant on Civil and Political Rights.

201. This is a right which it is difficult to exercise in Zaire and which has been disregarded on numerous occasions in the past. The shortages deriving from the catastrophic economic situation, reflected in an evident deterioration of the road and railway network, are compounded by the administrative obstacles which the Special Rapporteur was able to observe at the national and international airports he used when travelling to Goma and Mbuji-Mayi. The same bureaucratic constraints apply to domestic flights as to flights abroad, which are already subject to considerably greater obstacles than those normally found in other countries. According to a report by the Association zaïroise de défense des droits de l'homme (AZADHO) in the Périodique des Droits de l'Homme, No. 9, there are 13 police or administrative services operating at N'djili airport in Kinshasa. Since officials are paid in arrears, the passengers are subjected to harassment - as the Special Rapporteur was able to see for himself - by officials wishing to obtain some recompense for their services.

202. The difficulties are even greater for the thousands of Kasaï living in Shaba, which they are being forced to leave by the persecution practised against them. Some take years to find a place in the trains, travelling in high-risk conditions that often cost them their lives. People travelling by road have to put up with exactions from individuals dressed as soldiers, whether genuine or otherwise.

203. Despite a reduction in the obstacles specific to the right to freedom of movement, the Special Rapporteur was informed of the case of N'Gov A Mafetet, a former security services agent who on 15 April 1994 was exiled against his wishes from Kinshasa to his region of origin, Shaba. In addition, Guillaume Ngefa Atondoko, the President of AZADHO, was prevented from leaving the country on 7 January 1994. Invoking orders from higher authority, the police also searched his luggage and seized copies of the Périodique des Droits de l'Homme, as being "seditious and intended to discredit the nation". These cases were transmitted to the Government but no reply has yet been received. It was also learned that Lambert Mende was twice prevented from boarding the plane in Kinshasa, once when he was bound for his region of origin and the other when he was about to go abroad. His luggage was searched on both occasions.

6. Right to a fair trial

204. In sum, there may be said to be two basic principles involved in the right of due process provided for in article 14 of the International Covenant on Civil and Political Rights: the equality of the parties (which requires the guarantees for the defence dealt with in paras. 1, 2 and 3) and the independence and impartiality of the tribunal.

205. Equality of the parties. There is a yawning gap between law and practice in Zaire. While the law requires that every prisoner should be defended by a lawyer, in practice almost all those standing trial or convicted who were visited in prison were without a lawyer or did not even know whether defence counsel had been appointed for them.

206. Contrary to the requirements of article 9 (3) of the International Covenant on Civil and Political Rights, pre-trial detention, is the general rule rather than the exception, with the harmful consequences that that entails for the presumption of innocence. The data show that 70 per cent of prisoners have not been convicted, and while there are no figures on this point, the Special Rapporteur was told that more than 50 per cent of untried prisoners are in pre-trial detention, and only a minority have been released on bail.

207. The right to a fair trial and the principle of equality must also be seen from the standpoint of the party who claims "the determination ... of his rights", as stated in article 14 (1) of the Covenant. Victims of crimes, particularly when they are committed by agents of the State, are entitled to a public hearing by an independent tribunal accompanied by due guarantees. In this respect, the law is simply not applied. Inquiries, if any, are conducted in secret, without the victim or his family having the right to intercede in the proceedings, and never produce any result. A thick cloak of impunity covers officials who violate human rights. Investigations of torture, political assassinations or disappearances are unknown. Sage principles regarding effective prevention and investigation of extralegal, arbitrary or summary executions, as well as the basic principles of justice for the victims of crimes and abuses of authority, are completely disregarded.

208. In this respect, it is regrettable that lawyers and NGOs do not regularly have recourse to justice, a failure which they explain by their lack of confidence in the judicial system. In the present situation, however, the only way to bring about changes is to exercise remedies and exert legitimate pressure in the courts and all other bodies.

209. Independence and impartiality of the judiciary. The Supreme Court has shown significant signs of independence in various cases - for instance, in the judgement on the Lubumbashi incidents of 1991, and in the 1992 ruling that the valid and applicable constitutional norm was that approved by the National Sovereign Conference, and not, as the President contended, the constitutional text of 1967 as amended. Another demonstration of independence was the circular of 16 August 1993 voiding the measures of dismissal and transfer of judges arbitrarily decreed by Prime Minister Faustin Birindwa.

210. Nevertheless, these displays of independence have had consequences. After the constitutional decision of 1992, the house of the President of the Supreme Court, Balanda Mikwin Leliel, was attacked on three occasions by the DSP, causing the death of one of his neighbours. The judges of the Supreme Court also had to change residence. Since that date and up to the time when the present report was finalized, the Supreme Court building has been without electricity, and the judges have had to work in oppressive heat and only in daylight hours.

211. In previous years, some judges were attacked by the police or suspended for failing to order the detention of journalists. This year, the Special Rapporteur knows only of the incident that occurred on 9 January 1994, when a DSP official expelled all the officers of the Kasavubu Bridge magistrates' court and took over the premises for himself. The judges had to transfer to Assossa and work in a bar.

212. The judiciary has also suffered from the national crisis. A judge earns a monthly salary of about $6 which is often received several months in arrears, although recently salaries have been paid more regularly. The Special Rapporteur was told that litigants often have to pay the cost of judicial actions, including money to enable the judge to go and question detainees in prison, since the Gendarmerie does not have the transport or funds to bring them to the court.

213. This crisis in the judicial system is leading the population to the dangerous course of self-defence. The Special Rapporteur was informed that, on 17 January 1994 in Bukavu, the population was so exasperated by pillaging that it took revenge through incidents that caused the death of seven civilians and two soldiers. Also, on 10 May 1994 at Bumbu, a bus conductor was killed by a soldier on demanding payment of the fare, with the result that the victim's colleagues killed the first soldier who came along.

214. Pressure is also exerted on lawyers. The best-known case is that of the lawyer Alain Poussy, whose handling of a commercial mining case led him to be harassed in various ways (including a lengthy spell of detention in 1993) so as to force him to cede rights to high governmental authorities. These pressures have continued during the current year. Special mention should also be made of the case of the lawyer Palku Liverive of Northern Kivu, who is reported to have been imprisoned for four hours on 25 January 1994 for having pleaded a case. These cases have been transmitted to the Government, but no reply has yet been received.

7. Right to freedom of assembly

215. The right to freedom of assembly, embodied in article 20 of the Universal Declaration and article 21 of the International Covenant on Civil and Political Rights, has also been subjected to numerous restrictions. One of the most common forms of protest by the population is the so-called "ville morte" days. The Special Rapporteur transmitted the following cases to the Government:

(a) On 22 April 1994, Civil Guard elements violently dispersed a demonstration of the Parti lumumbiste unifié (PALU) in Matonge;

(b) Many participants in the demonstration called for 27 May 1994 by the radical opposition were wounded when it was aggressively dispersed by the so-called "forces of law and order" in Yolo, Limite and Kimbaseke, while the day before there was a failed homicide attempt on Ferdinand Lukaso Nd'Jate Lukoto;

(c) On 26 June 1994, a meeting held at the house of the President of the Union pour la démocratie et le progrès social (UDPS) of Kasai Oriental, in Mbuji-Mayi, with the participation of Lambert Mende, was broken up by the armed forces on the orders of the regional governor;

(d) On 16 August 1994, the Civil Guard violently broke up a peaceful march of civil servants protesting over the delay in the payment of their wages;

(e) On 2 September 1994, an opposition demonstration was dispersed outside the German Embassy in Kinshasa, where a delegation of the Union sacrée de l'opposition radicale et alliés (USORAL) was meeting delegates of the European Union.

The Government has not replied to these allegations.

8. Right to freedom of association

216. Article 20 of the Universal Declaration of Human Rights and article 22 of the International Covenant on Civil and Political Rights recognize the right of everyone to freedom of association with others, including the right to form and join trade unions. The Special Rapporteur is concerned by the allegations received in relation to:

(a) Political parties. Although political parties are recognized in law and in practice, they have repeatedly been subjected to intimidation and acts of repression. Many of the acts described in connection with the right to life, physical integrity and security and liberty of person derive from measures designed to weaken political parties. In addition, political party leaders have been the victims of pillaging. This reportedly happened in the case of Kabeya Balunda on 18 February 1994, when plundering was carried out by DSP personnel in Ngaliema. Joseph Olenghankoy has also been subjected to intimidation measures on various occasions;

(b) Non-governmental organizations. There are many NGOs, particularly in the field of human rights. Their work is difficult and is conducted in highly inadequate conditions resulting both from the lack of economic resources and from the enormous communication problems. These NGOs have been subjected to numerous reprisals. For instance, as was mentioned earlier, the President of AZADHO was prevented from leaving the country on the scheduled date. The same President Ngefa Atondoko was threatened by the security services because of statements published in two newspapers (Le Potentiel and Référence Plus) on 7 November 1994, in which he invited President Mobutu to testify before the international tribunal on Rwanda set up by the United Nations Security Council. Willy Kalume Lualaba, a Voix des sans voix activist, was arrested on 14 June 1994 by military personnel standing guard at the People's Palace for possession of "seditious documents". He was tortured

at the military district jail in Kinshasa before being released two days later. Guy Eugene Diomi Ngongala, President of the Ligue zairoise pour les enfants défavorisés (LIZAJEDEF), was harassed in his home by a group of soldiers who seized medical supplies valued at US$ 10,000 that had been donated by Pharmaciens sans frontières, Paris;

(c) Trade unions. Trade union organizations, which are already extremely weak because of the high level of unemployment and the lack of resources, have also suffered reprisals.

In addition to the dispersal of the demonstration of civil servants on 16 August 1994, mention should be made of the assaults committed on Bavela du Dinafet and Jean Bosco Mudingayi, President and Assistant Secretary of the National Trade Union of Public Service Employees. Moreover, Willy Kalamba Maloba, National Executive Secretary of the Organisation des travailleurs et des paysans africains, was allegedly attacked by uniformed men who stole all his possessions. These cases were transmitted to the Government on 7 November 1994. At the date of publication of this report, no reply had been received.

9. Right to freedom of opinion and expression

217. Article 19 of the Universal Declaration and of the International Covenant on Civil and Political Rights provides for the right of freedom of expression and opinion. While freedom of expression may be subject to "certain restrictions", freedom of opinion is unrestricted.

218. There have been numerous violations of this right in Zaire in previous years, creating a culture of fear in connection with the exercise of this vital freedom. Bomb and grenade attacks on the Terra Nova printing house, the newspaper Le Potentiel and the home of the journalist Leon Moukanda in 1992, together with the arrest of the editor of Le Phare and that of Kandolo Mulumba and Kalala Mbenga Kalao, as well as the closure of the publications Umoja, Elima, La Renaissance and Salongo in 1993, have created a climate of total insecurity.

219. There is currently a somewhat more open approach regarding the written press, although its circulation is small and limited to the city of Kinshasa, where some 100 newspapers and reviews are circulating unlawfully. However, this cannot be thought to constitute genuine freedom of expression or to mean that the right of the Zairian people to be informed has been established. The newspapers convey more opinions than information, have a limited print-run and contain little news. In addition, all newspapers of which the Special Rapporteur is aware are written in French and not in the native languages, which are those best known by the population. In this connection, foreign journalists claim that they are frequently denied visas for entry into the country, either directly or through the use of subterfuges or delaying tactics.

220. The situation with regard to the audiovisual media is different. Television and radio are fiefs of the Presidency, where no dissidence is permitted. The television programme "Les deux sons de cloche", in which, it is true, there is a political debate between followers of the Mouvance

présidentielle and the opposition, is cited as a demonstration of openness. However, it is known that there are two oppositions - the one in the Government and the one that proclaims itself to be radical. Although the radical opposition has occasionally intervened, the participants are normally members of the opposition in the Government. In any event, it is not clear whether the topics of the debates are of interest to the opposition that terms itself radical. According to the Ligue des droits de l'homme (Zaire), other programmes such as "Questions d'actualité" and "Revue de presse" represent "a timid break with the past" (Les cent jours du gouvernement Kengo).

221. The Minister of Information informed the Special Rapporteur of a recent proposal which has to be approved by the Government before being submitted for parliamentary scrutiny. The idea of this proposal, according to the Minister, is to regulate the exercise of freedom of expression and determine the responsibilities of journalists and the press. Another proposal still under consideration relates to the State-owned public media.

222. The developments affecting the press which were reported to the Special Rapporteur during the period of his mandate are as follows:

(a) The newspaper Mukuba was suspended on 4 January 1994, allegedly for publishing seditious documents. It is reported that Alain Mushabah, editor of the newspaper La Tempête des Tropiques, was arrested on 17 February 1994 by uniformed men and had all his personal effects confiscated. On 21 February, the offices of the newspaper L'Analyste, in Kinshasa, were stormed by armed military personnel who seized all copies of the paper, cut the telephone line and took away the journalists' personal belongings. In addition, on 15 June 1994, members of the armed forces demolished newspaper sales outlets, carrying off all copies and sowing panic in the city. On 24 August, Eddie Mukuna, a journalist working for Le Potentiel, was summoned by the Office of the Military Prosecutor-General after writing three articles on military pillaging of the humanitarian food aid received in the country.

(b) Despite promises to the contrary, nine journalists dismissed from the Office zairois de la radiodiffusion et télévision (OZRT) for political reasons during the Birindwa Government in 1992 have not yet been reinstated. These cases have been transmitted to the Government, but no reply has yet been received.

(c) The most serious development, of course, was the deaths of the journalists Pierre Kabega and Adolphe Kavula.

C. Economic, social and cultural rights

1. Social and economic situation

223. Zaire is a rich country with huge deposits of copper, cobalt, zinc, diamonds, manganese, gold, silver and coal. This mineral wealth, together with coffee, makes up the bulk of its exports. Its principal imports are consumer goods, industrial machinery and vehicles. Zaire's main trading partners are Belgium, France, the United States, Germany and South Africa.

224. Despite this wealth, Zaire is in a state of instability, decline and economic collapse. It appears in 140th place in UNDP's Human Development Report (1994). Inflation, which reached 4,133 per cent in 1991, the consequent devaluation of the local currency against other currencies, have continued apace. During the Special Rapporteur's visit to Zaire, the value of 1 United States dollar rose from 2,700 to 3,200 new zaires in less than a week. At the beginning of the 1970s, 1 zaire was worth 2 dollars. Capital flight has been one of the major factors contributing to inflation and to the economic crisis. According to the most recent figures available, gross national product was 6.6 billion United States dollars. Zaire's external debt is estimated to be approximately 6 billion dollars - approximately equivalent to the Zairian capital held abroad. In 1992 annual per capita income was less than 180 dollars. Some 12 million individuals are estimated to be unemployed.

225. Although the Special Rapporteur has no mandate to report on poverty, this background information is important as his mandate does extend to the impact of economic decline on the enjoyment of economic, social and cultural rights. Zaire's lamentable economic situation has affected the standard of living of the population, most of whom are unable to meet their basic needs.

2. The right to work

226. Article 6 of the International Covenant on Economic, Social and Cultural Rights enshrines the right of everyone to the opportunity to gain his living by work. The Covenant also establishes the right to remuneration which ensures a decent living for workers and their families. These conditions are non-existent in Zaire. Public employees are unable to live on their wages, not only because they are inadequate, but because they are paid several months late. The pay of primary school teachers ranges from approximately 20,000 to 30,000 new zaires (US$ 10) per month, and a doctor earns the equivalent of from 10 to 60 dollars. According to information received by the Special Rapporteur, the minimum wage was equivalent to 8 dollars per month.

227. The cost of basic foodstuffs is out of all proportion to wages. One litre of oil costs approximately 1 dollar, a kilogram of fresh meat may cost from 3 to 7 dollars and a box of powdered milk rarely costs less than 3 dollars. The Special Rapporteur was told that families, which are as a rule large (the average number of children per woman is six) have to take turns to eat. The cost of non-essential items such as wine, beer or fruit juice is virtually prohibitive for a Zairian family, which is rarely able to afford products such as meat, chicken or milk. The lack of money to ensure a bare subsistence has been the cause of plundering and has led to the development of a parallel subsistence economy based on barter, in which the local currency has been replaced by the United States dollar.

3. The right to housing

228. Article 11 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to adequate housing. It is impossible to rent a small studio flat in Kinshasa for less than 20 dollars. The simplest flats cost approximately 100 dollars. It was reported to be not

unusual for a whole family to occupy a single room. It is commonplace for dwellings to be without electricity and running water. Nor is there any street lighting or refuse-collection service.

4. The right to public health and sanitation

229. Article 12 of the Covenant requires States to adopt measures to ensure the highest attainable standard of physical and mental health. Such measures include the creation of conditions which would assure to all medical service and medical attention in the event of sickness. The Government of Zaire would appear to be completely unconcerned about public health requirements, as only 3 per cent of the State budget is earmarked for this purpose, in comparison with over 40 per cent for the armed forces and security services. The hospital sector, which is one of those most affected by the country's overall crisis, lacks medicines and the necessary supplies to provide minimal medical care. The low salaries of doctors make it necessary for patients to pay, which means that the destitute are completely neglected.

230. The commonest diseases in Zaire are malaria and tuberculosis. According to the Ministry of Health, approximately 21,000 cases of AIDS have been declared, although it is estimated that approximately 8 per cent of the population could be infected with the virus. Non-governmental sources estimate that 10 per cent of Kinshasa's population are carriers of immunodeficiency virus, the figure in rural areas being slightly lower. The medical and sanitary assistance programmes which had been initiated as a result of multilateral cooperation projects and the efforts of WHO, UNICEF and non-governmental organizations, have been discontinued on account of the political crisis.

5. The right to education

231. Article 13 of the International Covenant on Economic, Social and Cultural Rights recognizes the right to primary, secondary and university education. There are 1,500 private and 850 public schools in Kinshasa, some of which belong to UNESCO's Associated Schools Project.

232. A number of sources, including the associations of parents and students of the University of Kinshasa, told the Special Rapporteur that because of the minimal salaries paid to teachers, pupils' parents had kept the primary and intermediate establishments running, as well as the universities. At present, at the University of Kinshasa, where over 12,000 students are enrolled (80 per cent men and 20 per cent women), students are required to pay 67 dollars for the first semester and 25 for the second.

D. Situation of children

233. Children are among those most affected by Zaire's state of social and economic disintegration. The extreme poverty in which many Zairian families live, in conjunction with the lack of public health and education services, makes children one of the most vulnerable population groups. As a result, malnutrition and the lack of vaccination against certain diseases have pushed up infant mortality from 138 per 1,000 infant deaths in 1988, to 193 per 1,000 in 1992 and 213 per 1,000 in 1993.

234. A total of 12 million children are enrolled in school, although some children receive no form of education. This problem is particularly serious in the case of the displaced children in Shaba and of Rwandese refugee children at the present time. At the Bashala displaced persons camp in Mbuji-Mayi, UNICEF is providing the equipment to set up a school. In the case of the Rwandese refugees, the former teachers are reported to be providing informal teaching, although their role is limited as the circumstances mean that children spend their time performing basic tasks essential for their family's survival, such as finding water, firewood and food.

235. Another specific problem concerns children who live in rural areas where diamonds are mined. According to several sources, in the villages of Makumbi, in the Luebo mining district and Mai Munene, in the district of Tshikapa, children aged from 13 to 16 work in the mines. From 30 to 50 children die each year in diamond mining. It is also reported that in the region of Demba, young girls aged from 12 to 14 disappear into early polygamous marriage or to be exploited in child-prostitution networks.

236. There have been reports of the military recruiting children to serve in the armed forces. This was verified by the Special Rapporteur when he spoke to an imprisoned soldier, who said that he had been in the army since the age of 16.

237. The situation of street children is equally important: these children take up begging because of family problems, the death of their parents or simply neglect and are easily led into delinquency at a very early age. The Special Rapporteur was told that non-governmental re-education centres for street children were being established, to provide assistance for the most underprivileged.

E. Situation of women

238. The role of women in Zairian society is circumscribed by a number of ancient traditions that relegate them to a domestic role. Although a minority of women acquire an education and pursue a career comparable to men, the overall status of women bears no comparison with that of men. There are, for example, only two women of ministerial rank in the Government: in the Departments of Social Affairs and Health, and Agriculture.

239. According to the information received, working women only receive two thirds of their normal pay when on maternity leave.

240. Sources involved in the field of women's rights reported that one out of three Zairian women are allegedly ill-treated by their husbands, although only 2 per cent of them file complaints. Women also suffer physical or sexual violence outside the home; the Special Rapporteur regularly and repeatedly heard allegations that rape by the military as a means of repression was increasing.

241. The rates of school enrolment and literacy for women are lower than for men. In 1992, 56 per cent of the children enrolled in school in the region of Kasai were boys. Both society and the family appear to give preference to

boys when families lack the means to pay for the education of all their children. The State, which provides neither adequate educational services nor decent salaries for teachers, cannot elude its responsibility.

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. General conclusions

242. The Special Rapporteur has endeavoured to focus on the topics specifically referred to by resolution 1994/87 of the Commission on Human Rights, which expressed concern both about the persistent seriousness of the situation of human rights in Zaire, and about the "serious obstacles which still stand in the way of the process of democratic transition".

1. Respect for the process of transition

243. The Special Rapporteur is afraid that the Zairian people may once again find its aspirations to democracy thwarted. The requirements to enable the new authorities to take office on the date planned, 9 July 1995, are far from being met. This situation will give rise to further arduous negotiations among factions that seem to be increasingly irreconcilable.

244. The "serious obstacles" referred to by resolution 1994/87 are still there. Unfortunately, the legitimate legal divergencies over the interpretation of the Transitional Constitution have not been settled. This has further accentuated the political polarization pursued by an authoritarian regime unable to remain in power.

245. This is the case, despite the good will of Prime Minister Kengo who, when he introduced his Government, announced the measures to be adopted in compliance with the 1993 Protocol Agreement and the Transitional Constitution of 9 April 1994. The Special Rapporteur was informed that the electoral act entered the legislative stage in December 1994, without the agreement of the opposition, which refuses to accept that it should be debated within the legal and politico-administrative committees, as they are chaired by members of the Mouvance presidentielle. The parliamentary political debate with sectors outside the Government has not yet begun, even though 8 of the 15 months set aside for it have passed.

246. Where the other requirements, such as the electoral census, the budget and the provision of funds are concerned, the delay is even greater and has been aggravated by the economic crisis already described.

247. The Special Rapporteur earnestly hopes that he will be able to inform the Commission on Human Rights of tangible progress in this area in his general statement to the fifty-first session.

2. Observance of civil and political rights

248. Regrettably, the situation that determined the Commission's adoption of resolution 1994/87 still prevails. Its continuation is nothing other than the result of the absence of democracy in Zaire. Real power there is in the hands of President Mobutu Sese Seko, who controls the country's armed and security forces, as well as the issue of currency.

249. The right to life constantly hinges upon the whim of the military and police authorities, and the Government of Prime Minister Kengo has not the slightest influence to put an end to the excesses, to prevent them or, still less, to punish them by bringing those responsible to trial and providing both victims and accused guarantees of impartiality, with the efficient and professional cooperation of a trustworthy police force. A common feature of the incidents examined by the Special Rapporteur is the involvement of members of the armed and security forces. Impunity, which has frustrated the transition process, has not been eradicated.

250. The cases of the journalists Adolphe Kavula and Pierre Kabeya must be elucidated so that there is no longer the slightest doubt about the Government's desire not to permit such acts to go unpunished.

251. The Kengo Government has made considerable efforts to break up the JUFERI organization, whose members used to seek out persons from Kasai in Shaba, to beat them up and drive them from the region, with complete impunity. They also refused to allow the use of the Tshiluba language and prevented people from Kasai from walking in groups of two or more along the street and checked identity cards, which give the bearer's region of origin. While those efforts deserve recognition, they should above all be encouraged, in order to convince those who believe they enjoy impunity that it has been actually eradicated.

252. Torture is still practised and the Special Rapporteur saw with his own eyes the marks of it on some prisoners, even when he chose prisoners at random in the jails. The prison situation, about which the Commission was also concerned, remains serious on account of the inhuman conditions to which prisoners are subjected.

253. The number of political prisoners has fallen considerably, and the order, dated 5 August 1994, for the release of prisoners deserves special mention. Although arbitrary detentions have occurred, there have been far fewer than during the previous period and it should be mentioned that political detainees are brought before the courts more rapidly than in the past. Unfortunately, persons charged with offences under ordinary law have not benefited from similar progress.

254. Freedom of opinion and expression is widespread where the press is concerned, although this is not the public's main source of information. In addition, under the Kengo Government, limited progress was made in respect of radio and television, by authorizing limited participation by the non-governmental opposition. However, this is clearly inadequate. The present level of access of political tendencies to the mass media at election time is unacceptable either to the local non-governmental opposition or to international democratic public opinion.

3. Observance of economic, social and cultural rights

255. The collapse of the State apparatus, which is unanimously recognized, has a direct impact on the enjoyment of economic, social and cultural rights, and particularly on the right to health, to adequate housing and to education.

B. Recommendations

256. In view of the state of human rights and the political situation in Zaire, the Special Rapporteur wishes to make the following recommendations:

1. To the Zairian authorities

257. Effective and genuine control must quickly be established over the State security apparatus. The police must be placed under the authority of the Government, and not the President, and under the responsibility of the Ministry of the Interior rather than the Ministry of Defence. To achieve this, it is indispensable for the law clearly to determine the competence of individual departments, all of which must be subject to the letter of the law. The Transitional Parliament must be given access to the police recruitment, training and education systems, and the police must be given training on the human rights norms it is required to observe. The idea put forward by the National Sovereign Conference to hold "States General" on the armed forces cannot be ignored, although any such meeting must involve what is commonly known in Zaire as "society at large".

258. The purpose of the armed forces is to defend the nation; they should thus not perform any domestic police, repressive or public order function.

259. The authorities should adopt the language of pacification. The opposition should not be condemned as enemies nor should journalists be described as criminals, or human rights organizations as the agents of subversion. The legitimacy of the people's aspiration to freedom should be recognized.

260. The absolute political and military authority which has been exercised for over 30 years by the same person should be restricted by means of genuine, concrete and above all bona fide measures that are not and cannot be interpreted as superficial or insignificant.

261. The efforts made by the Government of Prime Minister Kengo to normalize payment of the remuneration of public officials must be consolidated. The Government must make it clear both in word and deed that acts of plunder and abuse will not be tolerated. The law must be applied to all, both rulers and the ruled, with equal rigour.

262. Applications by persons sentenced to death by the courts for a pardon or for the commutation of their sentences must receive a positive reply from the President as soon as possible. Keeping persons in a state of uncertainty pending the President's decision constitutes additional suffering to the sentence itself, for which the law makes no provision. A decision in this respect will certainly contribute to instituting a climate of reconciliation.

263. Police and judicial investigations into the crimes which have disturbed public opinion, such as the murders of the journalists Pierre Kabeya and Adolphe Kavula, must be carried out with the utmost speed and rigour, in order to determine without a shadow of doubt where criminal responsibility lies. Official statements denying or justifying such acts or deflecting actual responsibility for them in no way help to achieve this.

264. Laws to regulate the electoral process can no longer be postponed. They are urgently required. Electoral laws and the establishment of the National Electoral Committee are the prerequisites for elections.

265. The Government must ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and simultaneously make the declaration provided for by article 22 that it recognizes the competence of the Committee to receive and consider individual communications.

266. The Judiciary should be strengthened by providing training for its members, but fundamentally by ensuring compliance with its decisions, which must be reached without political pressure, threats against judges or fear of reprisals. However, judges too must become the custodians of liberties, and demand that all detainees be brought before them within the time-limits prescribed by law. The Attorney-General's Department and judges must inspect places of detention regularly. Such inspections are an irreplaceable means of eradicating torture.

267. The Government must pay attention to complaints and information from non-governmental organizations, on the understanding that they are inspired solely by an unselfish desire to serve. The cause of truth is in no way served by repressing and threatening them or restricting their freedom of movement.

268. The Government must cooperate with all the United Nations mechanisms for the protection of human rights, and submit in due time the reports required of it either in compliance with its obligations under human rights conventions or by virtue of resolutions adopted by the Commission on Human Rights or other United Nations bodies. The Government may rest assured that the Special Rapporteur has no other aim than to ensure respect for fundamental human rights, to which he has devoted his entire professional career both in his own country and elsewhere where human rights are ignored.

269. In view of the serious problems affecting children in Zaire and other countries of the region, particularly Rwanda, and since Zaire is a party to the Convention on the Rights of the Child, the Government could offer to host, in 1995, a subregional meeting of the Committee on the Rights of the Child, which could consider the situation of children in the subregion, including the problem of displaced and refugee children.

2. To non-governmental organizations

270. The non-governmental human rights organizations can play their fundamental role only if they prove capable of voicing the feelings of the victims and the aspirations of those who have devoted their lives to the struggle for freedom and the cause of human rights. To do so requires, in

addition to a vocation, efficiency and professional skill. This means that each case has to be investigated and followed up on an ongoing basis, regardless of any setbacks. It also requires national coverage, the essential technical elements, and scrupulous accuracy in setting out the facts and in presenting statistics. It also requires that all the legal remedies available under Zairian legislation, however limited, be exhausted.

271. International non-governmental organizations must provide the maximum technical and other assistance to the Zairian non-governmental human rights organizations, which operate under such trying conditions.

3. To the international community

272. The situation that gave rise to resolution 1994/87 of the Commission on Human Rights has remained essentially unchanged, despite some improvements in terms of personal liberty and, to a lesser extent, freedom of expression. Moreover, a crucial period is coming up, with the completion of the period prescribed by the Transitional Constitution. Accordingly, the international community must remain particularly vigilant towards forthcoming developments.

273. The international community must concern itself with political issues connected with the establishment of a democratic regime, and with the observance of fundamental rights. Fundamental rights are only respected under a democratic regime. It is impossible to disregard one key fact to which the Special Rapporteur has already drawn attention: the current transition process is the fifth since 1965, and the third in the last four years. The Zairian people may legitimately be wary, particularly as it is increasingly obvious that the deadlines laid down will once again not be met.

274. One observation heard by the Special Rapporteur in Washington, in Mbuji-Mayi, in Geneva, in Kinshasa, in Brussels and in Goma, from journalists, lawyers, political specialists, diplomats and members of the military, and one which may be inferred from the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, is that if the political situation in Zaire explodes, its consequences will be far greater than those in Rwanda or Burundi. The current level of tension and the tribal and regional rivalries that have been stirred up, and have been further inflamed by the huge inflow of Rwandan refugees, gives reason to fear this may occur. The international community, and in particular those countries with historical responsibilities in the region, cannot disregard a situation of this scale. The Special Rapporteur's conscience would not be clear if he failed to express his opinion in this respect. Preventive diplomacy is urgently required, although the Special Rapporteur believes that any such diplomatic measures cannot be aimed at reinforcing the status quo, as there is no certainty that an irreplaceable guarantor of stability exists. Zaire's transition cannot be postponed. Friendly countries could bring their diplomatic and political influence to bear in order to resolve the current conflicts in Zaire.

275. Efforts must be made to find a viable, safe, humane, dignified and early solution for the refugees from Southern and Northern Kivu. If this requires the organization of an international force, then it should be done.

276. The international community must provide technical and financial support for the transition process. Zaire lacks infrastructure, and is unaware of the procedures that proceed, accompany and follow an election, nor does it have the resources to enable a population as large as its own to participate. Solidarity with Zaire calls for such a contribution from the international community.

277. In order to monitor the observance of human rights in Zaire a United Nations infrastructure will be required on the spot. The United Nations High Commissioner for Human Rights should send two human rights specialists with logistical support and a permanent base in the Office of the United Nations Development Programme in Kinshasa, to monitor the human rights situation in Zaire, in conjunction with the Centre for Human Rights in Geneva. The specialists would gather relevant information on allegations of human rights violations in Zaire, follow up complaints and be able to visit prisons and places of detention. They would keep the Special Rapporteur regularly informed and facilitate his task which is limited in practice to keeping in touch with the situation in Zaire through two missions per year to Geneva and one to Zaire. The specialists would also advise the governmental authorities and non-governmental organizations on appropriate measures to strengthen institutions for the protection and advancement of human rights in Zaire.

Notes

1/ This figure does not include Rwandese refugees who have recently arrived in the region.

2/ The census of the Banyarwanda population in connection with the forthcoming elections raises concerns that have not yet been resolved.

3/ The information received on these clashes is confused, and there is no clear picture of what is happening.

4/ One week before the Special Rapporteur's visit, 79 prisoners were allegedly transferred to Rutschuru prison.